1755.

SUPREME COURT OF THE UNITED STATES.

No. 175.

THE SCHOONER CATHARINE, HER TACKLE, &c., STARKS W. LEWIS, AND AL. OWNERS AND CLAIMANTS, APPELLANTS.

VS.

NOAH DICKINSON, AND AL., LIBELLANTS.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK.

INDEX.

	Original.	Print.
Certificate of clerk	1	3
Certificate of judge	2	3
PROCEEDINGS IN DISTRICT COURT.		
Libel	3	3
Stipulation for libellants' costs	8	5
Monition and marshal's return	9	6
Depositions taken before Commissioner Bridgham	11	8
Stipulation for libellants' costs	12	8
Bond to marshal	13	9
Stipulation for costs, by claimants	17	10
Claim of Starks W. Lewis, and al.	19	12
Answer of Lewis, and al.	21	13
Replication of Noah Dickinson, and al.	28	16
EVIDENCE FOR LIBELLANT.		
Deposition of John K. Williams	30	17
" Ralph E. Clark	37	20
" Horace S. Williams	43	22
" George R. Missick	49	25
" John N. Brown	53	27
Certificate of commissioner	58	29

EVIDENCE FOR RESPONDENTS.

	Original.	Print.
Deposition of Richard McGovern	60	31
" Adoniram J. Lancaster	66	34
Certificate of commissioner	72	36
Deposition of Philip Arthur	74	38
Certificate of commissioner	82	41
Testimony of Alexander Baker	84	42
" Benjamin Ferris	87	43

FOR PLAINTIFF.

Testimony of John K. Williams	88	44
" James Myers	88	44
" Jonah S. Foltam	89	44
Interlocutory decree	90	45
Notice of reference	92	45

TESTIMONY BEFORE COMMISSIONER OF REFERENCE.

Testimony of Wm. S. Tyler	94	46
" Christopher Tyler	95	46
" Jonathan S. Dickinson	95	46
" Morris Freeman	96	47

EVIDENCE FOR CLAIMANT.

Testimony of Oren Crowell	100	49
" Benjamin A. Crowell	102	49
Points contended for by the parties	103	50
Commissioner's report	105	51
Exceptions to commissioner's report	107	52
Notice of motion to confirm commissioner's report	108	52
Exceptions overruled and commissioner's report confirmed	109	53
Final decree of District Court	111	54
Notice of appeal	113	54
Time allowed claimant to perfect appeal	114	55
Bond for costs on appeal	117	56
Proceedings in Circuit Court	119	57
Testimony of George W. Morton, Clerk of the District Court	122	58
" Joseph Bridgham	127	61
Exhibit A	131	63
" B	133	63
" C	135	64
Certificate of Commissioner R. E. Stilwell	138	64
Cause heard before Circuit Court	139	65
Decree of Circuit Court	140	66
Appeal Bond	144	67
Petition to Supreme Court U. S.	146	69
Citation and service	150	70

UNITED STATES OF AMERICA,
Southern District of New York, ss:

I, John W. Nelson, Clerk of the Circuit Court of the United States of America, for the Southern District of New York, in the Second Circuit, do hereby Certify, that the writings annexed to this Certificate are true copies of their respective Originals, on file, and remaining of record in my office.

In testimony whereof, I have caused the seal of the said Court to be hereunto affixed, at the City of New York, in the Southern District of New York, in the Second Circuit, this twentieth day of December, in the year of our Lord one thousand eight hundred and fifty-three, and of the Independence of the said United States, the seventy-eighth.

[SEAL.] J. W. NELSON,
Clerk.

UNITED STATES OF AMERICA,
Southern District of New York, ss:

I, George W. Morton, Clerk of the District Court of the United States of America, for the Southern District of New York, in the Second Circuit, do hereby certify, that the writings annexed to this Certificate are true copies of their respective originals, on file, and remaining of record in my office.

In testimony whereof, I have caused the seal of the said Court to be hereunto affixed, at the City of New York, in the Southern District of New York, in the Second Circuit, this first day of September, in the year of our Lord one thousand eight hundred and fifty-three, and of the Independence of the said United States the seventy-eighth.

[SEAL.] GEORGE W. MORTON,
Clerk.

At a stated term of the District Court of the United States of America, for the Southern District of New York, held at the City Hall, in the city of New York, on Saturday the twenty-third day of July, in the year of our Lord one thousand eight hundred and fifty-three.

Present, the Honorable Charles A. Ingersoll, District Judge.

NOAH DICKINSON and others
vs.
The Schooner CATHARINE, her tackle, &c., and JONATHAN COLLINS, Master.

1852, April 22. The libellant files his libel in the words and figures following:—

To the Honorable Samuel R. Betts, Judge of the District Court of the United States for the Southern District of New York.

The libel of Noah Dickinson, Simeon H. Hubbard, Oliver P. Smith, David Russell, and Ezra H. Williams, of Herdam, in the State of Connecticut, David C. Burr, of Middletown, in the said State, against the schooner Catharine, her tackle, apparel, and other furniture, and against Jonathan Collins, her master, and all persons lawfully intervening for their interest in the same in a case of collision, civil and maritime, alleges as follows:—

First. That your libellants before and at the time of the collision, hereafter in the third article mentioned, were the owners and proprietors of a certain schooner or vessel, called the San Luis, with her tackle, apparel, and other furniture, which schooner your libellants used in the coasting trade between the River Connecticut and the City of Philadelphia, through Long Island Sound and the City of New York.

Second. That on Wednesday, the twenty-first day of April, 1852, the said schooner, in the prosecution of the said trade, was running down the coast from the Bay of New York to the Capes of the Delaware, bound for Philadelphia, with a cargo of stone, of the value of three hundred dollars, or thereabouts, and was proceeding in a proper manner, and was in every respect light, staunch, and strong, and well manned, tackled, apparelled, and appointed, and having the usual and necessary complement of officers and men, and the master and crew engaged on board were on the lookout for the proper sailing, protection, and safety of the said schooner.

Third. That on the evening of the 21st day of April, at about half-past six o'clock, and while the San Luis was safely and properly sailing down the coast, and about twenty miles from Laurel Hole, and off Squam Beach, the schooner Catharine, of which one Collins is master and part owner, came up the coast, bound from some foreign port to the port of New York, and then and there, with great force and violence, ran into and upon the San Luis, and broke through her side, so that she soon filled with water and sunk.

Fourth. That at the time of the said collision, the Catharine was coming up the coast from the south with a fair wind and with ample sea room, while the San Luis was beating against the wind and was inside of the Catharine and standing off the shore.

Fifth. That the Catharine had no watch and no person on the lookout, before or at the time of the said collision, and that the same was occasioned by the improper and unskilful management of the persons navigating the said Catharine. That they might have easily avoided the collision, having a free wind and ample sea room; but on the contrary, she luffed and struck the San Luis about midships with full head on.

Sixth. That the said collision was not occasioned by any fault,

negligence or want of skill on the part of the San Luis, her master or crew.

Seventh. That the San Luis was so injured and disabled by the said collision, that after an ineffectual struggle on the part of her master and crew to stop the breach and keep her afloat till she could reach the shore, she sunk and was totally lost.

Eighth. That the value of the San Luis was six thousand two hundred dollars, and that your libellants have applied to one Charles W. Lewis, the consignee and part owner of the said Catharine, to pay the damages occasioned to your libellants by the said collision, which he has refused to do.

Ninth. That the said Catharine is now lying in the port of New York, and within the jurisdiction of this court.

Tenth. That all and singular the premises are true and within the admiralty and maritime jurisdiction of the United States and of this court.

Wherefore, the libellants pray that process in due form of law, according to the course of this court in cases of admiralty and maritime jurisdiction, may issue against the said schooner Catharine, her tackle, apparel and other furniture; and that the said Collins, and all persons having any interest therein, may be cited to appear and answer all and singular the matters aforesaid; and that this court would decree the payment of the damages aforesaid; and that the said Catharine, her tackle, apparel and other furniture may be condemned and sold to pay the same; and that the libellants may have such other and further relief as in law and justice they may be entitled to receive.

E. H. WILLIAMS.

Subscribed and sworn to April 22, 1852, before me,

GEO. W. MORTON,
U. S. Com'r.

JAS. S. SLUYTER, *Proctor.*
D. D. FIELD, *Advocate.*

Indorsed: 10, 91. U. S. District Court South. Dist. New York. Noah Dickinson et al., vs. Schooner Catharine, her tackle, &c. Libel

JAS. S. SLUYTER, *Proctor.*

Filed 22d April, 1852.

DISTRICT COURT OF THE UNITED STATES,
For the Southern District of New York:

Filed 22d day of April, 1852.

Stipulation for Libellants' Costs, entered into pursuant to the Rules and Practice of this Court.

Whereas a Libel was filed in this court, on the twenty-second day of April, in the year of our Lord one thousand eight hundred

To the Honorable Samuel R. Betts, Judge of the District Court of the United States for the Southern District of New York.

The libel of Noah Dickinson, Simeon H. Hubbard, Oliver P. Smith, David Russell, and Ezra H. Williams, of Herdam, in the State of Connecticut, David C. Burr, of Middletown, in the said State, against the schooner Catharine, her tackle, apparel, and other furniture, and against Jonathan Collins, her master, and all persons lawfully intervening for their interest in the same in a case of collision, civil and maritime, alleges as follows:—

First. That your libellants before and at the time of the collision, hereafter in the third article mentioned, were the owners and proprietors of a certain schooner or vessel, called the San Luis, with her tackle, apparel, and other furniture, which schooner your libellants used in the coasting trade between the River Connecticut and the City of Philadelphia, through Long Island Sound and the City of New York.

Second. That on Wednesday, the twenty-first day of April, 1852, the said schooner, in the prosecution of the said trade, was running down the coast from the Bay of New York to the Capes of the Delaware, bound for Philadelphia, with a cargo of stone, of the value of three hundred dollars, or thereabouts, and was proceeding in a proper manner, and was in every respect light, staunch, and strong, and well manned, tackled, apparelled, and appointed, and having the usual and necessary complement of officers and men, and the master and crew engaged on board were on the lookout for the proper sailing, protection, and safety of the said schooner.

Third. That on the evening of the 21st day of April, at about half-past six o'clock, and while the San Luis was safely and properly sailing down the coast, and about twenty miles from Laurel Hole, and off Squam Beach, the schooner Catharine, of which one Collins is master and part owner, came up the coast, bound from some foreign port to the port of New York, and then and there, with great force and violence, ran into and upon the San Luis, and broke through her side, so that she soon filled with water and sunk.

Fourth. That at the time of the said collision, the Catharine was coming up the coast from the south with a fair wind and with ample sea room, while the San Luis was beating against the wind and was inside of the Catharine and standing off the shore.

Fifth. That the Catharine had no watch and no person on the lookout, before or at the time of the said collision, and that the same was occasioned by the improper and unskilful management of the persons navigating the said Catharine. That they might have easily avoided the collision, having a free wind and ample sea room; but on the contrary, she luffed and struck the San Luis about midships with full head on.

Sixth. That the said collision was not occasioned by any fault,

negligence or want of skill on the part of the San Luis, her master or crew.

Seventh. That the San Luis was so injured and disabled by the said collision, that after an ineffectual struggle on the part of her master and crew to stop the breach and keep her afloat till she could reach the shore, she sunk and was totally lost.

Eighth. That the value of the San Luis was six thousand two hundred dollars, and that your libellants have applied to one Charles W. Lewis, the consignee and part owner of the said Catharine, to pay the damages occasioned to your libellants by the said collision, which he has refused to do.

Ninth. That the said Catharine is now lying in the port of New York, and within the jurisdiction of this court.

Tenth. That all and singular the premises are true and within the admiralty and maritime jurisdiction of the United States and of this court.

Wherefore, the libellants pray that process in due form of law, according to the course of this court in cases of admiralty and maritime jurisdiction, may issue against the said schooner Catharine, her tackle, apparel and other furniture; and that the said Collins, and all persons having any interest therein, may be cited to appear and answer all and singular the matters aforesaid; and that this court would decree the payment of the damages aforesaid; and that the said Catharine, her tackle, apparel and other furniture may be condemned and sold to pay the same; and that the libellants may have such other and further relief as in law and justice they may be entitled to receive.

E. H. WILLIAMS.

Subscribed and sworn to April 22, 1852, before me,
GEO. W. MORTON,
U. S. Com'r.

JAS. S. SLUYTER, *Proctor.*
D. D. FIELD, *Advocate.*

Indorsed: 10, 91. U. S. District Court South. Dist. New York. Noah Dickinson et al., vs. Schooner Catharine, her tackle, &c. Libel

JAS. S. SLUYTER, *Proctor.*

Filed 22d April, 1852.

DISTRICT COURT OF THE UNITED STATES,
For the Southern District of New York:

Filed 22d day of April, 1852.

Stipulation for Libellants' Costs, entered into pursuant to the Rules and Practice of this Court.

Whereas a Libel was filed in this court, on the twenty-second day of April, in the year of our Lord one thousand eight hundred

and fifty-two, by Noah Dickinson and others, against the schooner Catharine, her tackle, &c., and Jonathan Collins, master, for the reasons and causes in the said libel mentioned, and praying that the said schooner, her tackle, &c., may be condemned and sold to pay the demands of the libellants, and the said libellant and James S. Sluyter, surety, parties hereto, hereby consenting, that in case of default or contumacy on the part of the libellant or his sureties, execution for the sum of two hundred and fifty dollars may issue against their goods, chattels and lands: Now, therefore, it is hereby stipulated and agreed, for the benefit of whom it may concern, that the stipulators undersigned shall be, and each of them is hereby bound in the sum of two hundred and fifty dollars, conditioned that the libellants above named shall appear and answer to the cause and to interrogatories, shall pay all such costs as shall be awarded against them by the final decree of this court, or upon an appeal, by the Appellate Court.

E. H. WILLIAMS,
JAMES S. SLUYTER.

Taken and acknowledged this 22d day of April, 1852, before me,

GEO. W. MORTON,
U. S. Commissioner.

SOUTHERN DISTRICT OF NEW YORK, ss.

James S. Sluyter, party to the above stipulation, being duly sworn, deposes and says that he resides in the city of New York, and that he is worth the sum of five hundred dollars, over and above all his just debts and liabilities.

JAMES S. SLUYTER.

Sworn to, this 22d day of April, 1852, before me,

GEO. W. MORTON,
U. S. Commissioner.

SOUTHERN DISTRICT OF NEW YORK, ss.

The President of the United States of America, to the Marshal of the Southern District of New York, greeting: Whereas a libel in rem and personam hath been filed in the District Court of the United States for the Southern District of New York, on the twenty-second day of April, in the year of our Lord one thousand eight hundred and fifty-two, by Noah Dickinson and others, against the schooner Catharine, her tackle, &c., and Jonathan Collins, master, for the reasons and causes in the said libel mentioned, and praying the usual process and monition of the said court in that behalf to be made, and that all persons interested in the said schooner or vessel, her tackle, &c., may be cited in general and special, to answer

the premises, and all proceedings being had that the said schooner or vessel, her tackle, &c., may, for the causes in the said libel mentioned, be condemned and sold to pay the demands of the libellant.

You are therefore hereby commanded to attach the said schooner or vessel, her tackle, &c., and to detain the same in your custody, until the further order of the court respecting the same, and to give due notice to all persons claiming the same, or knowing or having anything to say why the same should not be condemned and sold pursuant to the prayer of the said libel, that they be and appear before the said court, to be held in and for the Southern District of New York, on the eleventh day of May next, at eleven o'clock in the forenoon of the same day, if the same shall be a day of jurisdiction, otherwise on the next day of jurisdiction thereafter, then and there to interpose a claim for the same, and to make their allegations in that behalf.

And whereas the libellant has prayed that process in due form of law might issue against the said Collins, now, therefore, we do hereby further empower, and strictly charge and command you the said Marshal, that you cite and admonish the said Jonathan Collins, if he shall be found in your District, that he be and appear before the said District Court, on the eleventh day of May next, at the City Hall in the city of New York, then and there to answer the said libel, and to make his allegations in that behalf; and have you then there this writ, with your return thereon.

Witness the Honorable Samuel R. Betts, Judge of said Court, this twenty-second day of April, in the year of our Lord one thousand eight hundred and fifty-two, and of our Independence the seventy-sixth.

GEO. W. MORTON,
Clerk.

JAS. S. SLUYTER,
Proctor.

In obedience to the within monition, I attached the schooner Catharine therein described, on the 22d day of April, 1852, and have not given due notice to all persons claiming the same, that this court will on the 11th day of May instant, (if that day should be a day of jurisdiction, if not, on the next day of jurisdiction thereafter,) proceed to the trial and condemnation thereof, should no claim be interposed for the same.

H. F. TALLMADGE,
U. S. Marshal.

Dated 11th May, 1852.

Personally served on Jonathan Collins, the within named defendant.

H. F. TALLMADGE,
U. S. Marshal.

Vol. 10, No. 91. Southern District of New York, United States District Court. Noah Dickinson and others *vs.* The Schooner Catharine, her tackle, &c., and Jonathan Collins, master. Process in rem and personam. Returnable 18th May, 1852.

JAS. S. SLUYTER,
Proctor for Libellant.

Filed May 11, 1852.

I hereby depute Lorenzo De Angelis to execute the within process.

H. F. TALLMADGE,
U. S. Marshal.

Dated April 22, 1852. Paid.

At a stated term of the District Court of the United States of America for the Southern District of New York, held at the City Hall in the city of New York, on Thursday the twenty-ninth day of April, in the year of our Lord one thousand eight hundred and fifty-two, present, the Honorable Samuel R. Betts, District Judge.

NOAH DICKINSON et al.
vs.
THE SCHOONER CATHARINE, her tackle, &c. } 10, 91.

Joseph Bridgham, U. S. Commissioner, brings into court the depositions taken before him in this cause on the part of the libellants and complainants.

Ordered, that be filed.

DISTRICT COURT OF THE UNITED STATES,
For the Southern District of New York:

Filed the day of 185

Stipulation for Libellants' Costs, entered into pursuant to the Rules and Practice of this Court.

Whereas a libel was filed in this court, on the twenty-second day of April, in the year of our Lord one thousand eight hundred and fifty-two, by Noah Dickinson and others, against the schooner Catharine, her tackle, &c., for the reasons and causes in the said libel mentioned, and praying that the said schooner, her tackle, &c., may be condemned and sold to pay the demands of the libellant, and the said libellant and David Anderson, surety, parties hereto hereby consenting, that in case of default or contumacy on the part of the libellants or their surety, execution for the sum of two hundred and fifty dollars may issue against their goods, chattels and lands—Now, therefore, it is hereby stipulated and agreed, for the benefit of whom it may concern, that the stipulators undersigned shall be, and each of them is hereby bound in the sum of two hundred and fifty dollars, conditioned that the libellants above named shall appear and

answer to the cause and to interrogatories, and shall pay all such costs as shall be awarded against them by the final decree of this court, or upon an appeal, by the Appellate Court.

N. DICKINSON,
DAVID ANDERSON.

Taken and acknowledged, this 3d day of May, 1852, before me,

GEO. W. MORTON,
U. S. Commissioner.

SOUTHERN DISTRICT OF NEW YORK, ss.

David Anderson, party to the above stipulation, being duly sworn, depose and say, that he resides at No. 5 Monroe Place, Brooklyn. That he is worth the sum of five hundred dollars, over and above all his just debts and liabilities.

DAVID ANDERSON.

Sworn to, this 3d day of May, 1852, before me,

GEO. W. MORTON,
U. S. Commissioner.

DISTRICT COURT OF THE UNITED STATES OF AMERICA,
For the Southern District of New York.

The Schooner CATHARINE, &c., SAMUEL CROWELL, &c., Claimants,
vs.
NOAH DICKINSON and others.

Bond to the Marshal under the act of Congress of March 3, 1847.

Know all men by these presents that we, Samuel Crowell and Ezra Lewis, are held and firmly bound unto Henry F. Tallmadge, Marshal of the United States for the Southern District of New York, in the sum of twelve thousand five hundred dollars, to be paid to the said Henry F. Tallmadge, for the payment of which, well and truly to be made, we bind ourselves, and each of us, our and each of our heirs, executors, and administrators, jointly and severally, firmly by these presents. Sealed with our seals, and dated the tenth day of May in the year of our Lord one thousand eight hundred and fifty-two.

Whereas a libel has been filed in the District Court of the United States for the Southern District of New York, on the 22d day of April, in the year of our Lord one thousand eight hundred and fifty-two, by Noah Dickinson, or the libellant against the schooner Catharine, for the sum of six thousand dollars, on which process of attachment has issued, and the said schooner is in custody of the Marshal under the said attachment, and Samuel Crowell has applied for a discharge of said schooner from the custody of the Mar-

shal, and has filed a claim claiming the said schooner as owner, and has filed a stipulation for the claimant's costs, pursuant to the rules and practice of the said Court. Now, therefore, the condition of this obligation is such, that if the above bounden Samuel Crowell and others shall abide by and answer the decree of this Court, then this obligation shall be void, otherwise the same shall be and remain in full force and virtue.

SAMUEL CROWELL, [SEAL.]
EZRA LEWIS, [SEAL.]

Sealed and delivered, and taken and acknowledged this 10th day of May, 1852, before me,

GEORGE W. MORTON,
U. S. Comm'r.

UNITED STATES OF AMERICA,
Southern District of New York, ss:

Ezra Lewis, being duly sworn, doth depose and say, that he resides in Brooklyn, and does business at 24 South St., and that he is worth the sum of thirteen thousand, over and above all his just debts and liabilities.

EZRA LEWIS.

Sworn to, this 10th day of May, A. D. 1852, before me,

GEORGE W. MORTON,
U. S. Comm'r.

I approve of the sufficiency of the sureties to the within bond. Dated this 10th day of May, 1852.

SAMUEL R. BETTS.

Vol. 10, No. 91. United States District Court. Noah Dickinson and others *vs.* The Schooner Catharine, &c., Samuel Crowell, claimant. Betts and Donohue, Proctors for Claimant. Bond under act of Congress of March 3, 1847.
Filed the 10th day of May, 1852.

DISTRICT COURT OF THE UNITED STATES,
For the Southern District of New York:

Filed the 10th day of May, 1852.

Stipulation entered into pursuant to the Rules and Practice of this Court.

Whereas a libel was filed on the 22d day of April, in the year of our Lord one thousand eight hundred and fifty-two, by Noah Dickinson and others, against the Schooner Catharine, &c., for the reasons and causes in the said libel mentioned; and praying that said schooner may be condemned; and the parties hereto hereby consenting and agreeing, that in case of default or contumacy on the

part of the claimant or his *surety*, execution for the sum of two hundred dollars may issue against their goods, chattels and lands: And, whereas, also, a claim was filed in said cause by Samuel Crowell and others:

Now, therefore, it is hereby stipulated and agreed, for the benefit of whom it may concern, that the stipulators undersigned shall be, and are, hereby bound in the sum of two hundred dollars, conditioned that the claimants above named shall pay all costs and damages which shall be awarded by the final decree of this Court, or upon an appeal by the appellate court.

SAMUEL CROWELL,
EZRA LEWIS.

Taken and acknowledged this 10th day of May, 1852, before me,

J. BRIDGHAM,
U. S. Comm'r.

SOUTHERN DISTRICT OF NEW YORK, ss:

Ezra Lewis, party to the above stipulation, being duly sworn, depose and say he resides in Brooklyn, that he is worth the sum of two hundred and fifty dollars, over and above all his just debts and liabilities.

EZRA LEWIS.

Sworn to, this 10th day of May, 1852, before me,

J. BRIDGHAM,
U. S. Comm'r.

At a stated Term of the District Court of the United States of America, for the Southern District of New York, held at the City Hall, in the city of New York, on Tuesday the eleventh day of May, in the year of our Lord one thousand eight hundred and fifty-two.

Present, the Honorable

SAMUEL R. BETTS,
District Judge.

NOAH DICKINSON et al.
vs.
THE SCH'R CATHARINE, her tackle, &c. } 10.91

Jas. and S. Sluyter, Betts and Donohue, for Crowell and Collins.

The Marshal returns the monition, schooner Catharine attached. No notice personally served on Collins.

Messrs. Betts and Donohue having entered appearance for Crowell and Collins, claimants.

Ordered, that the claimants have ten days to file and perfect their answer.

And on motion of Mr. Sluyter, Proctor for the libellants, ordered default nisi and reference.

District Court of the United States, for the Southern District of New York.

In Admiralty of April Term, in the year of our Lord one thousand eight hundred and fifty-two.

The schooner CATHARINE, her tackle, apparel, and furniture, &c., and others, Claimants,
vs.
NOAH DICKINSON and others Libellants.

To the Honorable Samuel R. Betts, Judge of the District Court of the United States, for the Southern District of New York.

The claim of Starks W. Lewis, Jno. Rider, Wm. Baker, Chas. Smith, Coleman Studley, Owen Studley, Elisha Crowell, James Small, Jas. Small, jr., David Kelly, Russell D. Teerris, Seth Collins, Mrs. Irving, Pember, Mrs. B. Crowell, owners of the American schooner or vessel called the Catharine, her tackle, apparel, and furniture, now in the custody of the Marshal of the United States, for the Southern District of New York, to the libel and complaint of Noah Dickinson and others, libellants, against the said vessel, her tackle, apparel, &c., allege and articulately propound as follows:—

First. That *these* respondents and claimants now are, and at the time of the filing of the libel of the said Noah Dickinson and others, against said vessel, were the true and only owners of the American ship or vessel, called the Catharine, her tackle, apparel and furniture, and entitled to the possession, control and custody thereof.

Second. And these respondents and claimants further say, that the said schooner Catharine, her tackle, apparel and furniture of the said schooner, are now in the custody, and in the possession of the Marshal of this court.

Third. And the claimants and respondents further show, that they deny all the allegations of the libel herein.

Wherefore, these claimants and respondents pray that this Honorable Court would be pleased to pronounce against the claims of the libellants, and to order, adjudge, and decree, that the libel be dismissed with costs, and that the said vessel be delivered to the claimants and respondents, or for such relief as may be just.

SETH COLLINS.

BETTS & DONOHUE,
Proctors for Claim'ts.

W. R. BEEBE,
Advocate.

UNITED STATES OF AMERICA,
Southern District of New York, ss:

Be it remembered, that on this 15th day of June, A. D. 1852, before me, the subscriber, a commissioner duly appointed, &c., personally came and appeared Seth Collins, one of the claimants and respondents in the foregoing claim named, who being by me duly sworn, did depose and say, that had heard the foregoing claim read, and knew the contents thereof; that the same was true of his own knowledge, except as to the matters therein stated on information and belief, and as to those matters he believes it to be true.

CHAS. ELIOT SCOVILLE,
U. S. Com'r.

Endorsed: 10, 91. U. S. District Court. The schooner Catharine, her tackle, &c., Starks W. Lewis, and others claimants, *ads.* Noah Dickinson and others claimants.

BETTS & DONOHUE,
Cln'ts Proctors.

Filed, June 19, 1852.

To the Honorable Samuel R. Betts, Judge of the District Court of the United States, for the Southern District of New York.

The answer of Starks W. Lewis, Jno. Rider, Wm. Baker, Chas. Smith, Coleman Studley, Owen Studley, Elisha Crowell, James Small, Jas. Small, jr., David Kelly, Russell D. Teerris, Seth Collins, Mrs. Rody Wing, Pember, Mrs. Bethea Crowell; owners of the schooner Catharine, her tackle, apparel and furniture, to the libel and complaint of Noah Dickinson, Simon H. Hubbard, Oliver S. Smith, David Russell, Ezra Williams, and David C. Bruce, claiming to be the owners of the schooner or vessel called the San Luis, against the schooner or vessel called the Catharine, her tackle, apparel, and furniture, in an alleged cause of collision, and thereupon the respondents allege and articulately propound as follows:—

First. That these respondents now are, and were the owners of the American schooner or vessel called the Catharine, her tackle, apparel and furniture, and have duly claimed the same, and on the execution of a bond as required by the Act of Congress, of March, 1847, have had said vessel duly delivered to them.

Second. And these respondents further answering, say, that as to whether the libellants were before, or at the times mentioned in the libel, the owners or part owners of the schooner or vessel called the San Luis, her tackle, apparel, and furniture, these respondents are ignorant, and leave libellants to make such proof as they shall be advised is material; that, as to whether said vessel was engaged between Connecticut and Philadelphia, they are also ignorant, nor do they know in what business or employment said vessel was, and

leave the libellants to make such proof as they may be advised is material.

Third. That as to what voyage the schooner San Luis was on, on the 21st day of April, 1852, or where bound, they are ignorant; but they admit she was running down the coast in the neighborhood stated in the libel, but what she had on board, or what was the value or quantity thereof, they are ignorant; that if the allegation in said libel is intended to mean said vessel was properly or safely navigated or directed, these respondents deny the same; that as whether said vessel was staunch, or strong, or well manned, tackled, apparelled, and appointed, and whether she had on board the usual and necessary complement of officers and men, these respondents are ignorant, but from their best information deny *said* statements; and these respondents answering, allege that it is untrue that the master and crew were on the lookout for the proper sailing protection or safety of said schooner San Luis; that they were sailing during a dark night without a light or any proper lookout.

Fourth. And these respondents further answering say that is untrue, and they deny that on the 21st day of April at any *time* the said schooner San Luis was safely navigated, as stated in the libel; but they admit the schooner San Luis was sailing along down the coast, and the schooner Catharine up the coast; and that said schooner Catharine was bound from a foreign port to New York, and that Collins was master thereof; but they wholly deny that she was ran with great force and violence into and upon the said schooner San Luis; but they allege that the said schooner San Luis was ran across the bows of and afoul of the said schooner Catharine; and they further deny that said vessel filled, but allege that the said schooner San Luis did not fill, but remained above water and floated for a long time thereafter, and might have been saved but for the abandonment of the said schooner by the crew thereof.

Fifth. That at the time of the collision the wind was as these respondents allege so as to enable the schooner San Luis to keep her course full down the coast without keeping off shore; they deny that she was so keeping off shore, and charge that the said statement is inconsistent with the other allegations of the libel that the schooner Catharine had the wind free.

Sixth. And these respondents allege that the schooner Catharine had the usual watch which is set or had on board such class of vessels in similar situation, before and at the time of the said collision, and these respondents deny that said collision was occasioned by the unskilfulness or mismanagement of those navigating the schooner Catharine; but allege that said collision was the result of the unskilfulness, want of care and management of those on board the said schooner San Luis; that the person who it was alleged was on the watch; the mate afterwards alleged he had seen the light which the Catharine carried some time before the collision,

and had luffed to go inside of her that it is wholly untrue; that the Catharine luffed, struck the San Luis as alleged, but it is true that the San Luis luffed and came across the bows of the Catharine.

Seventh. And these respondents wholly deny the sixth allegation of the libel, and allege that the collision was wholly the fault of those on board the said schooner San Luis.

Eighth. And these respondents further answering, say that they deny that the libellants or any person on board the schooner San Luis made any attempt to save the same; but that those on board thereof left without attempting to save her, and after said vessel had floated during a part of the night without sinking or any otherwise lost, but that she went ashore on Squam Beach.

Ninth. That as to what the value of said schooner was at the time she sunk, or any other time, the libellants have no positive information; but they wholly deny that she was of the value of six thousand two hundred dollars, or any such sum; and they deny that they are in any way or manner bound to pay or respond for any damages whatever to said vessel, as if any damages happened it was through libellants' own fault and his management, or of those in their service and employment.

Tenth. And these respondents further answering, admit that the said schooner Catharine was, at the time of the filing of the libel herein, in the port of New York, and within the jurisdiction of this Honorable Court.

Eleventh. That all and singular the premises herein stated are true, and wherein the libel differs herefrom, or is not hereby admitted, the same is untrue. In verification whereof if denied, the respondents crave leave to refer to the depositions and other proofs to be by them exhibited herein.

Wherefore the respondents pray that this Honorable Court would be pleased to pronounce against the claim of the libellants aforesaid, and to order adjudge and decree that the libel herein be dismissed with costs, or for such other or different order and relief to the respondents in the premises as shall to the court seem just.

SETH COLLINS.

BETTS & DONOHUE,
Proctors for Claimants.

W. R. BEEBE,
Advocate.

UNITED STATES OF AMERICA,
Southern District of New York:

Be it remembered, that on this 15th day of June, 1852, before me the subscriber, a Commissioner duly appointed, &c., personally came and appeared Seth Collins, one of the respondents in the foregoing answer named, who being by me duly sworn, did depose

and say, that he had heard the foregoing answer by him subscribed, read, and knew the contents thereof, that the same was true of his own knowledge, except as to the matters therein stated on information and belief, and as to those matters he believes the same to be true.

CHAS. ELIOT SCOVILLE,
U. S. Commissioner.

Indorsed 10,91. U. S. District Court, Noah Dickinson and others *vs.* The schooner Catherine, her tackle, &c., Starks W. Lewis, Seth Collins, and others, claimants. Answer.

BETTS & DONOHUE,
Proctors for Claimants.

Filed June 19, 1852.

To the Honorable Samuel R. Betts, Judge of the District Court for the Southern District of New York.

The replication of Noah Dickinson, Simon H. Hubbard, Oliver P. Smith, David Russell, Ezra H. Williams, and David C. Burns, libellants to the answer of Starks, Jno. Lewis, Jno. Rider, Wm. Baker, Charles Smith, Coleman Studley, Owen Studley, Elisha Crowell, Jas. Small, Jas. Small, Jr., David Kelly, Russel D. Teerris, Seth Collins, and Mrs. Rody Wing, Reuben, Mrs. Bethea Crowell, respondents, alleges that they, the said libellants, will ever maintain and prove their libel to be true, certain, and sufficient, and that the said answer of the said respondents is uncertain, untrue, and insufficient. And they pray as in and by their said libel they have already prayed.

JAMES S. SLUYTER,
Proctor for Libellants.

Indorsed 10,91. U. S. District Court, Noah Dickinson and others *vs.* The Schooner Catharine, her tackle, &c., Starks W. Lewis and others. Replication.

JAMES S. SLUYTER,
Proctor for Libellant.

Filed June 29, 1852.

At a stated Term of the District Court of the United States of America, for the Southern District of New York, held at the City Hall in the city of New York, on Tuesday, the nineteenth day of April, in the year of our Lord one thousand eight hundred and fifty-two.

Present the Honorable

SAMUEL R. BETTS,
District Judge.

NOAH DICKINSON
vs.
THE SCH'R CATHARINE, her tackle, &c. } 10, 91.

This cause being called in its order on the calendar, Mr. Donohue, proctor for the claimants, moves that the cause go off for the Term.

Mr. Field, proctor for the libellant, opposes the motion.

Ordered: That the cause go off for the term, on payment by the claimants of the libellants' costs of the term.

May, 1853. Cause heard. Present, Hon. Charles A. Ingersoll.

NOAH DICKINSON & *al.*
vs.
THE SCHOONER CATHARINE, &c.

Pleadings read. Evidence for Libellants.

John K. Williams. Was on board the San Louis; was mate; brother of the master; had 6 men in all on board; Captain, mate, cook, and 3 men before the mast. Tonnage about 111 tons; schooner engaged in carrying stone from Middletown, Philadelphia, and coal back; was carrying the blue curb stone; started from Jersey City on the evening of the 21st of April, 1852; about 2 and 3; went down the coast.

Not quite sundown when we went down the Hook coast; coast runs south by west, nearly north and south, up east by north; runs up north by east rather; wind was southwest by west; not a bad night; still starlight, some flying clouds; had been raining, but had cleared off; not a heavy wind; good sailing wind. I was at the head of the 1st watch; George Messick was with me in my watch; per Captain's watch, Nathan Wilson and Horace Williams; my watch when collision took place; my watch commenced at 8 P. M. Captain had gone below; at 8 I took the wheel; Messick went forward to lookout; was sailing as close to the wind as I could; was steering between S. and S. by W.; was constantly making leeway off the beach; could see from ¾ to 1 mile; Messick first saw the Catharine, I suppose; I saw her about ten minutes before the collision; saw the light of the Catharine, as I was looking under the boom to see another Connecticut vessel; when I first saw her, she was from 1 to 2 points to the leeward, on the larboard bow; spoke to the man on the bow; he said, keep your course and you will go clear; I did keep my course; asked the man at the bow if he could see her; he said that he could; he told me to keep my course; I did not alter my course; steered as close to the wind as I could; did not see much more of the Catharine till she struck us.

Captain hearing the conversation between me and Messick came on deck.

When I saw that she would strike, let my wheel go so that she would strike a glancing blow.

Was about three rods off when I put the wheel down; Catharine would not have come in contact with us if she had kept her course; she luffed and struck us; when I saw she luffed and was coming on us, I put my helm down.

She struck us about 8; abaft the forerigging, about opposite the hatch; she ran with force, head on.

She might have varied her course a little after I put the wheel down; her flying-boom went through our foresail; she cut us down below the water line; attempted to stop the leak with blankets. The Catharine was a-foul of us for 10 or 15 minutes; asked the Catharine to take in their sails; asked them 3 times before sail was taken in; asked them to cut their flying jib-boom; they refused; if they had, should have got clear; I cut our rigging; there was considerable sea; that caused the Catharine to do more and more damage; as she was swinging clear, their anchor caught our rigging again.

They were requested to take in their anchor, they did not.

After the collision, I went to pumping to try to get our vessel clear.

None came from the C. to help us; when the C. was clear our men left for the Catharine; the San Louis was filling; I and the Captain remained on board; not safe for any one to stay.

I, with the Captain, after the collision made for the shore; can't tell how far we run; run for fifteen minutes; I was at the wheel; the Captain said the vessel was filling very fast; looked, and saw the water coming on the cabin floor; was four feet water in the hold; the boat was rigged to leave the schooner; a line was made fast so as to keep near the schooner; got into the boat then; saw the Catharine vessel; then went on board the Catharine and came to New York; not safe to remain any longer on board; can't say how long the San Louis floated; not safe to remain any longer on board; we had cut away the rigging, because they would not cut away the jib-boom. Could not see that the Catharine had any man on the lookout; no one on the lookout on board the Catharine when we struck; when we struck they all came forward. St. Louis built at Haddam; owners, S. H. Hubbard, Dickinson, Oliver Smith, E. H. Williams, D. C. Burr.

If we had changed her course she would sink; she had not a heavy cargo on board; she had an average cargo; her masts would not have stood on the breakers; a good many vessels in sight; they were carrying the fore lower sails; not the practice to carry topsails at night; see 1 or 2 vessels that night carrying main-topsails.

Cross-Examined by Mr. Betts.

Beak not entirely out of water when I said the captain was near-

ing for the shore. After we got clear, in running for the shore, had gained 1 foot, water gaining all the while; pumps, 2 of them, in good working order; see 1 of the pumps pumping water; see Wilson pumping; after he had pumped some he said the pump had choked. In the course of 10 or 12 minutes after the collision, the men began to pass their things on board the Catharine; don't know how we got clear of the Catharine's anchor; the men passed their things on board the C. before we got clear of the anchor.

The reason why the 2d pump was not tried was, it was thought useless, because the water gained so fast; men did not pass their things on board till they saw the San Louis would sink; before passing the things on board the Catharine, it was seen the San Louis would sink.

Cut away the rigging with a hatchet; I cut away the forerigging; I did not cut away the main rigging. The Catharine vessel took in their sails; none of the Catharine's men came on board the San Louis; never saw the San Louis after that; never went to look for her; the captain of the San Louis started to look for her.

When the Catharine struck she had her 4 sails set; she had her main sail set; Messick did not tell me to put the helm down; saw that the Catharine was coming into us, when I put the helm down; by that, did not change the course of the vessel more than half a point; knew that the Catharine had changed her course; did not see when she changed her course; the Catharine was not standing the same course when she struck as she was when I first saw her; I steered by the compass, and kept as near the wind as I could; my course was S. half west; that was the way the San Louis was bearing; during the whole time, was steering a straight course; she struck us on the larboard side; she came head on, pretty near square on; we asked the Catharine to keep us company; he said that he would.

Direct.

Was steering a straight course, the San Louis full off about 1 point.

Could not make the shore by the course we steered; not far from 4 or 5 miles from shore when the collision took place.

If the Catharine had had a lookout, she could have avoided us.

Could not have taken a different course from what I did; took the usual course; have heard the captain of the Catharine say he was a part owner of the Catharine.

Cross-examined by Mr. Betts.

Have made about 8 voyages in a year; been to sea 4 or 5 years; have been mate before; been on this coast before.

Deposition of Ralph E. Clark, master of a vessel between N. York

and Philadelphia. On the 21st of April, 1852, sailed, &c.; (see the Deposition;) a good, wholesale breeze.

Deposition of Horace S. Williams.
Deposition of George R Messick.
Deposition of John N. Brown.

[The deposition objected to by Respondents and admitted.]

For Respondents:—

Deposition of Richard McGovern.
Deposition of Adoniram Lancaster.
Deposition of Philip Arthur.

DISTRICT COURT UNITED STATES,
Southern District New York:

NOAH DICKINSON and others
vs.
THE SCHOONER CATHARINE, her tackle, &c., and COLLINS.

Southern District of New York:

Ralph E. Clarke being sworn, saith that he is master of a vessel trading between the Connecticut River and Philadelphia, and is a resident of Haddam in Connecticut, and expects to sail from New York for Philadelphia to-night, and thence to return to Connecticut.

That on the 21st day of April, 1852, at a little after seven, this deponent, in command of the schooner J. Goodspeed, sailed from Jersey City in company with Captain Williams in command of the San Louis. Both were bound to Philadelphia, and passed the Hook nearly at the same time, at a little before 8 o'clock P. M. The J. Goodspeed was from three-quarters of a mile to a mile ahead; this deponent then met and passed a schooner bound to the northward, about a quarter of a mile to windward and heading to the westward of his course to the Hook. As well as this deponent could judge, a little after 8 o'clock the watch of the Goodspeed was changed, and at the time, the San Luis was clearly seen astern and a little to the windward of the J. Goodspeed. Almost as soon as deponent got below, after leaving his watch, the mate called out to him that the San Luis was in the wind. Deponent went on deck and said, What is the matter? He could then distinctly see the vessel, which was from three-quarters of a mile to a mile distant. As well as deponent could judge, there was no other vessel that passed the Goodspeed about that time, except the one that has just been spoken of. The night was not perfectly clear; now and then some cloud and then starlight overhead; it was the clearing off of a storm, not so dark but that deponent could see a vessel well enough. The wind was about west south-west, but very strong—what we should call

a good, wholesale breeze, and nothing that should make a vessel reef. This deponent saw a vessel in ballast ahead of him, carrying stay-sail and main-gaff-top-sail. This deponent was carrying fore-sails at 8 o'clock, the same as the San Luis; the Goodspeed and San Luis were nearly of the same size.

Being Cross-examined—

Witness says: I went on deck at 4 o'clock; went below at 8. I was aft at the wheel from 6 to 8. I steered by compass. I was steering south at the time the schooner passed me. Coast tends there north by east, south by west. The schooner I speak of passed to windward of me about a quarter of a mile. I was about—I could not tell how far I was off the shore; I did not notice it at the time. The San Luis was this time to the stern of me; I could not see clear the weather side of her deck. I can't tell which way she was heading; by the compass she was three-fourths to a mile off; at the time I had looked at her when I went below a little after 8, she was then as I have stated above. My mate called my attention a few minutes after I went; I had not turned in; I did not see anything along side of her when I came on deck and she in the wind; I saw her only; there was no other vessels that I saw there around; it was about five minutes from the time I looked at her, before going below, until I saw her in the wind. The mate said to me, The San Luis is all in the wind. At that time she was three-fourths to a mile astern; she had been no nearer than that within an hour; we were going about 6 knots an hour. I went below five or ten minutes after the schooner passed us. I was below at least a quarter of an hour before I was called. My lookout was a man before the mast, C. E. Mitchell. I was at the wheel; I was relieved by my mate. Nothing particular in the schooner that passed to call my attention to her. I continued to look at the San Luis for ten or fifteen minutes, and went below. I had no coat on when I came up, and therefore went below. I did not see what became of her at that time. I did not see any other vessel; I did see any about her; the vessel that passed me, of which I spoke, was steering, as near as I could judge, about north; I cannot tell exactly—somewhere to west, of course, of Sandy Hook. I first saw that vessel was just before I called the watch; I first saw her light ahead; I saw her sails to leeward; she was coming right ahead for me—that is, she was coming towards me, the same course I was heading; I stepped to windward of the wheel and saw the vessel right ahead; I had been standing to leeward of wheel; I told the mate to keep her off. I had been at the leeward side of the wheel; I let go, the mate took it and went to windward; I then saw the vessel; he did put his helm up; she was kept off a point; she was then steering south—had been steering south by west, about; vessel was then, as near as I can judge, about off Squam Beach; somewhere as near as I

can judge, the San Luis had no light that I saw; the vessel I saw had a light; there were no vessels around me, that I took any notice; I never take notice of vessels at a distance; there might have been some a great way off. After the helm was put up a point, as I have stated, that was the course I kept; I did not notice whether or not the San Luis made any change. The San Luis belonged at Haddam. I am no relation of the libellant.

Direct.

At the distance of the San Luis I could see nothing but the sails.

Q. If one of the vessels had let her sails, would there have, appears to you, more than one vessel? (Obj.)

A. No, sir; I don't think I could see.

Q. If one vessel had been on the line of the other, would there have appeared more than one vessel? (Obj. to.)

A. If one vessel had been head on, one vessel's sails would have hid the other's.

Sworn to before me, this 15th day of June, A. D. 1852.

WM. H. SPARKS,
Comm'r of Deeds.

R. F. CLARK.

We consent that this deposition be read in the same manner and on like condition, as though regularly taken before one of the United States Commissioners, the deposition to remain in possession of libellant's counsel.

Dated June 15, 1852.

BETTS and DONOHUE,
Proctors for Respondents.

Endorsed: 10.91. District Court U. S., South District, New York. Noah Dickinson and others against Schooner Catharine, her tackle, &c., and Collins.

Deposition of Ralph E. Clarke.

Filed May 31, 1853.

DISTRICT COURT UNITED STATES,
Southern District of New York, ss:

NOAH DICKINSON and others
against
The Schooner CATHARINE, &c., and J. COLLINS.

SOUTHERN DISTRICT OF NEW YORK, ss:

Horace S. Williams being sworn as a witness, on behalf of the libellants, says that he resides at Haddam, Connecticut, and leaves

New York to day for Portland, in the Connecticut River, that he is 18 years of age and upwards, is a brother of Captain Williams, of the San Luis, and was on board of her when the collision took place; his business was that of a hand; remembers the collision; he was below asleep at the time the San Luis was struck; it was his watch below, beginning at 8 o'clock; he had gone below at 8 o'clock, and had fallen asleep; when he heard the collision, came on deck as soon as possible; saw the Catharine on our larboard side, just abaft the fore rigging, her jib-boom was forward of the starboard fore rigging, and abaft the larboard forerigging. Captain Williams asked the captain of the Catharine if he couldn't rig in his flying jib-boom, or saw it off; the captain of the Catharine said he couldn't do it, he didn't think it would be of any use, he could clear without; he did get clear without sawing the jib-boom off; but we had to cut our forerigging to get clear. We cut the lanyards below the dead eyes, and that let the jib-boom clear of our forerigging; then, as the San Luis shot ahead, her main rigging caught the Catharine's anchor; then Captain Williams asked the captain of the Catharine if he could hoist his anchor on board; he said he couldn't do it, he had no purchase to do with it; he had a set of square sail halyards there all rove, and could have done it if he had wished; the captain and crew of the Catharine did nothing to help us; to get clear of the anchor we had to cut our main rigging adrift; thus we got the San Luis clear. Captain Williams asked his men, all of whom were then on board the Catharine, if they were going to leave him alone? the mate said no, and jumped aboard; the others had not time to get on board, nor was it very safe for them to do so, the water came in so fast; the San Luis, immediately on getting clear, hauled her course toward the shore; the Catharine made sail and stood after; the Catharine stood on till she came up with her, and then shot to the northward of her, and hauled her jib to windward, and waited for Captain Williams to come on board from the San Luis; before the San Luis swung off, Captain Williams asked the captain of the Catharine to stay by him; he did not think the San Luis could keep above water but a short time. Afterwards heard Captain Williams call out from his boat to the Catharine to hold on, and then they took him and the mate in. I immediately after the collision, heard Captain Williams ask Captain Collins how he came to run into her, how it happened? His answer was, that he didn't see him, that he had no lookout forward; he said the cause of his not having a watch was that he had just called his watch from below to take in the mainsail and reef it. Captain Williams asked him what he was reefing the mainsail for; he said he was reefing it because he did not wish to get to the Hook before morning. After all hands had come on board the Catharine, and we were on our way to the Hook, heard the crew of the Catharine in the forecastle, telling of the collision; they said they had no lookout;

said they thought it was careless the running into us. (This evidence of the circumstance objected to.)

It was a lowering sort of a night when I first came on deck. I could see half a mile certainly, and perhaps farther; saw vessels, which I am sure were half a mile off. Did not see the land then; didn't look for it. After we got the San Luis adrift, and perhaps 10 minutes after we began to stand in shore, I looked forward and saw land. We ran near a mile to the land.

After the collision Captain Williams asked Captain Collins several times what the name of his vessel was, and was the third time before he got an answer; then he said it was the Catharine.

The Catharine did not come directly into the Hook after we made sail for it, but stood off and on till daylight.

Being cross-examined.

Have followed the sea five years; there were six men, all told, in the San Luis, captain, mate, steward, and three men before the mast. It was mate's watch; George Messick was in his watch, no one else; the mate was at the wheel. We cut away our starboard forerigging to let the flying jib-boom off the Catharine. We cut the larboard mainrigging to clear the Catharine's anchor, not before. The flying jib-boom and bowsprit extended way across our vessel. I got on the Catharine. I jumped on the bow, her starboard bow, directly after I got on deck. All of the crew but mate and steward, and captain, were then aboard the Catharine. The steward came as quick as he could; the mate stayed some little while before he came. Captain Williams cut the forerigging and the main-rigging. Mate got on board the Catharine between the times that the two were cut. Captain Collins was standing forward and looking on; it was the first thing, I think, Captain Williams said to ask Captain Collins how the collision happened; he was then on his own vessel. It was a man by the name of Carty that belonged to the Catharine who said in the forecastle of the Catharine what I have stated in my direct examination. None else but him said anything in the forecastle. It was somewhere near half an hour after the collision before Captain Williams left the San Luis, perhaps more or less.

HORACE S. WILLIAMS.

Sworn this 27th day of May, 1852, before me,

JOSEPH BRIDGHAM,
U. S. Comm'r.

It is agreed that this deposition may be read on the trial of this cause as evidence, subject to all legal exceptions, and may in the mean time be retained in the hands of the libellant's proctors.

May 27, 1852.

BETTS and DONOHUE,
Proctors for Respondent.

Endorsed: 10.91. District Court U. S. Dickinson vs. Schooner Catharine. Deposition of H. S. Williams.
Filed May 31, 1853.

DISTRICT COURT UNITED STATES,
South District of New York:

NOAH DICKINSON and others
vs.
THE SCHOONER CATHARINE, her tackle, &c.
JONATHAN COLLINS.

Southern District of New York, ss.

George R. Messick, being sworn, saith that he resides at Milton in the State of Delaware, and expects to leave New York to-day or to-morrow for Philadelphia, and from there to go to sea; that he was a hand on board the San Louis, when the collision with the Catharine took place; that it was then his watch on deck which began at 8 o'clock; that the mate, who was the Captain's brother, was on the watch with him; that, previous to the collision, he saw several lights, perhaps a dozen, ahead, but could not tell which way the vessels bearing them was bound; witness was walking the deck forward looking out; the night was a little cloudy; some stars were to be seen; could see half a mile; I should suppose when I first saw the hull and sails of the Catharine, she was heading to the northward; I sung out to the mate at *our* helm to luff; he did so, and brought the San Luis into the wind; the Catharine then luffed also, and ran into us abaft the forechains, and cut the San Louis nearly to Light-water; the jib-boom of the Catharine got between our mast and the forerigging, and so were fast together; I should suppose a quarter of an hour, and we got clear, but cutting our lanyards away. We asked the Captain of the Catharine to cut his jib-boom off, and likewise to take his anchor; if he had done so, I think, we should have got clear; he did not do either. After the collision I remained on board the San Luis, till she was about getting loose, when I got on board the Catharine, because I did not think it safe to stay aboard the San Luis, got clear; her Captain asked the Catharine to follow her; she did so, till the Captain of the San Luis hailed us and asked to us to stop for him; for he could not stay aboard of her, for she was in the act of sinking. We then took him on board.

It was not safe to stay on board of the San Luis after the collision, and she could not have been got into any port.

After the collision, I asked the Captain of the Catharine how he came to run into us: he said he did not see us, till he put his wheel down. I asked him where his watch was; he said he was aft and hadn't any forward; and, likewise, the men said, they had no watch forward. If they had had a watch forward, they could have seen us in time to avoid a collision (his last answer objected to).

On his Cross-Examination: I had been in this vessel nearly a month, but not quite. Williams was captain, his brother was mate, his younger brother was a hand, two more hands, and a cook. I saw several lights ahead; I couldn't tell the Catharine's light from any other vessel's; I saw a light which I afterwards found out to be the Catharine's, it was coming towards us, off the lee-bow; I should suppose she was nearly half a mile off, when I could tell she was bound to the northward; I was walking across ship forwards; I was on the weather-bow, when I saw her; I suppose she was not more than half a point off our lee-bow. We had mainsail set, foresail, jib, and flying jib; I could walk under the jib, standing up straight; the flying jib didn't come down to the back of my head when I was standing. I saw the Catharine across the point of the bowsprit inside the stays; right away then I gave the mate the order to luff; he did it right away; she minded her helm readily. I think, the San Luis was not safe to remain on board of, because she was in a sinking condition; water had come upon top of the coal in her run, before I left her; the water was 6 or 8 in. on her ceiling, when I left her; it was after I got on board the Catharine, I had this talk with the Captain and the men. Captain said, all hands were aft reefing. I asked him where his lookout was—that was his reply; all the men told me, there was no man looking out forward. I don't know one man from another. I helped reef the mainsail of the Catharine after I got on board.

GEORGE R. MESSICK.

Sworn, June 2, 1851, before me

WILLIAM H. SPARKS,
Comm'r of Deeds.

Agreed, that this deposition being sworn to before a commissioner of the United States, or of this State, may be read as —— evidence in this case, and, mean time, may be retained by the proctors of the libellants; subject to all just exceptations.

BETTS & DONOHUE,
Resp's Proctors.

DISTRICT COURT U. S.

DICKINSON
vs.
SCHOONER CATHARINE, &c. } 10.91

Deposition of Messick.

Filed May 31, 1851.

UNITED STATES OF AMERICA,

SOUTHERN DISTRICT OF NEW YORK,
City, County, and State of New York, ss:

Be it remembered, that on this twenty-eighth day of April, in

1769

the year of our Lord one thousand eight hundred and fifty-two, I, Joseph Bridgham, a commissioner, duly appointed by the Circuit Court of the United States, for the Southern District of New York, in the Second Circuit, under and by virtue of the Acts of Congress, entitled "an act for the more convenient taking of affidavits and bail in civil causes, depending in the Courts of the United States," passed February 20th, 1812, and the Act of Congress, entitled "an act, in addition to an act, entitled 'an act for the more convenient taking of affidavits and bail in civil causes, depending in the Courts of the United States,'" passed March 1st, 1817, and the Act entitled "an act to establish the Judicial Courts of the United States," passed September 24th, 1789, did call and cause to be and personally appear before me, at my office, at the new City Hall, in the City of New York, in the said Southern District of New York, in the State aforesaid, John M. Brown, to testify and the truth to say, on the part and behalf of the libellants, in a certain suit or matter of controversy, now depending and undetermined, in the District Court of the United States, for the Southern District of New York, at the City of New York, wherein Noah Dickinson *et al.* are libellants, against the schooner Catharine, her tackle, &c.

And the said John M. Brown, being about the age of forty-three years, and having been by me first cautioned and sworn to testify the truth, the whole truth, and nothing but the truth, in the matter of controversy aforesaid, I did carefully examine the said John M. Brown, and he did thereupon depose, testify, and say as follows, viz:—

I a wrecker for Insurance Companies; my family reside in New Jersey; I leave New York to-morrow, for New Jersey, and thence according to the orders of the Insurance Companies; it may be five hundred miles distant from the district of New York; I have seen the schooner San Luis; I saw her last Thursday morning; she was lying in Squam Beach, bedded in six feet deep of water and sand; the water was going over her weather-rail about six feet high; she was lying against the beach; when I first saw her she had her mainsail on with the main peak down; foresail about half lowered; the larboard forerigging gone six feet from the dead eyes; the starboard fore-rigging gone; the foremast canted to port unstept, I suppose; jib and flying jib standing; larboard mainrigging gone, carried away at the lanyards or dead eyes; when the tide fell I went on board; the sea was breaking over the vessel badly; I found the deck stove and broken; at dead low water I examined the hole in the vessel as well as I could; the sea was coming in at the hole as fast as it could; I found her wales stove and cut down nearly to light water; there was a hole through the vessel, so that when I got down to look, I judge the hole, had it been a square hole, would have been 15 or 18 inches square; the hole was long up and down; I should think it was five feet wide, counting or measuring from the outer edges of the fracture; as far as I could judge this extended

from the deck to the light water; the timbers and planks had been smashed in; she had a cargo of stone; I recollect the night before.

Q. With that fracture and such a cargo on such a night, would it have been possible to save the vessel?

A. No, sir.

Q. As the schooner stood when you first saw her, what was she worth?

A. She wasn't worth a cent, excepting what I could get off her, as I supposed then; I have not changed my opinion, as regards the vessel's hull or saving the vessel; I have no idea that I can save her.

Q. What was she worth from what you got from her?

A. I can't tell what I gave for her; I gave 140 dollars for her.

Q. Was that all she was worth?

A. It was all she was worth to me.

Q. Was she worth more than that to any one else?

A. I don't think she was; the hole was on the larboard side, abreast of the after part of the main hatch.

Cross-Examined.

Q. Before the owners came there, had you personally done anything in or about the vessel, towards saving her, or anything from her?

A. Yes, sir.

Q. When did the owner get there?

A. I can't say he is the owner.

Q. Did you not purchase the vessel of this gentleman attending on this examination, with the counsel as the owner?

A. Yes, sir.

Q. When did that gentleman arrive at the vessel?

A. On Saturday he arrived at the village, where I first saw him; at the Squam village; this is 4 miles from the vessel; I purchased the vessel on the beach, opposite the vessel, about 25 steps from her; this was on the following Monday morning; I had never been at the vessel with him before, and never saw him there before.

Q. Do you mean us to understand that you are not trying to get the vessel off?

A. Let me explain; I have got men to go to work on the vessel to get out the cargo, and cut away the foremast and strip it, and save from the vessel all that can be saved, until I return.

Q. Do you not intend to save the hull of that vessel?

A. If I can; when I speak of the water going 6 feet over her it was at high tide, and the surf was breaking over her; the surf went over her at low water; her starboard side lay to the beach; she headed south; I never heard of the case of the brig Roarer, that I recollect; I have heard of the brig Iola.

Q. Have you been on board of a vessel with a hole knocked in

her, that you attempted to save? If so, what was the vessel, when and where?

A. I never have.

Q. Suppose you were on board a vessel, situate precisely as the San Luis was, from appearances, what would you have done to save her?

A. I should have tried to get something, bedclothes or canvas to stop it up; the San Luis had a cargo of stone on board; nothing else I believe; it was curb stone.

Q. What is a proper distance for a vessel sailing along the coast there with the wind off shore?

A. I should think from a quarter of a mile from the beach, to 10 miles; it depends on the draft and size of the vessel.

Q. How does the coast make there?

A. About south ½ west to north ½ east.

Re-direct.

Q. Have you any expectation of saving the hull?

A. I have not at this time; I don't know how things may be when I get back.

Q. Did you find any blankets or bedding about the hole?

A. Some under the cabin floor on the cargo.

JOHN M. BROWN.

Examination taken, reduced to writing, and by the witness subscribed and sworn to this 28th day of April, 1852, before me

JOSEPH BRIDGHAM,
U. S. Comm'r.

UNITED STATES OF AMERICA,
Southern District of New York, ss:

I, Joseph Bridgham a Commissioner, duly appointed by the Circuit Court of the United States, for the Southern District of New York, in the Second Circuit, under and by virtue of the Acts of Congress, entitled "An Act for the more convenient taking of affidavits and bail in civil causes, depending in the Courts of the United States," passed February 20th, 1812, and the Act of Congress, entitled "An Act, in addition to an Act, entitled An Act for the more convenient taking of affidavits and bail in civil causes, depending in the Courts of the United States," passed March 1st, 1817, and the Act, entitled "An Act to establish the Judicial Courts of the United States," passed September 24th, 1789, do hereby certify, that the reason for taking the foregoing deposition is, and the fact is, that the witness is material and necessary in the cause in the caption of the said deposition named, and that he is a wrecker, expecting to go more than one hundred miles from the District of New York. I further certify, that a notification of the time and place of taking the said deposition, signed by me, was made out and

served on the opposite party, to be present at the taking of the deposition and to put interrogatories, if he or they might think fit.

I further certify, that on the twenty-eighth day of April, A. D. 1852, I was attended by the proctors for the respective parties, and by the witness, who was of sound mind and lawful age, and the witness was by me carefully examined and cautioned, and sworn to testify the truth, the whole truth, and nothing but the truth, and the deposition was by me reduced to writing, in the presence of the witness and from his statement, and after carefully reading the same to the witness, he subscribed the same in my presence. I have retained the said deposition in my possession for the purpose of delivering the same with my own hand, to the Court for which the same was taken.

I further certify, that I am not of counsel or attorney for either of the parties in said deposition and caption named, or in any way interested in the event of the said cause named in the caption.

In testimony whereof, I have hereunto set my hand and seal, this twenty-eighth day of April, in the year of our Lord one thousand eight hundred and fifty-two, and of the Independence of the United States the seventy-sixth.

JOSEPH BRIDGHAM,

U. S. Com. duly appointed by the Circuit Court of the U. S., for the Southern District of New York, in the Second Circuit.

10.91. United States District Court, for the Southern District of New York. Noah Dickinson *vs.* the schooner Catharine, her tackle, &c. Depositions on the part of the libellants, taken before Joseph Bridgham, United States Commissioner, on the 28th day of April, 1852.

Filed 29th day of April, 1852.

JOHN M. BROWN.

$11 38.

UNITED STATES OF AMERICA,
SOUTHERN DISTRICT OF NEW YORK,
City, County, and State of New York, ss:

Be it remembered, that on this twenty-eighth day of April, in the year of our Lord one thousand eight hundred and fifty-two, I, Joseph Bridgham a Commissioner, duly appointed by the Circuit Court of the United States for the Southern District of New York, in the Second Circuit, under and by virtue of the Acts of Congress, entitled "An Act for the more convenient taking of affidavits and bail in civil causes, depending in the Courts of the United States," passed February 20th, 1812, and the Act of Congress, entitled "An Act, in addition to an Act, entitled 'An Act for the more convenient taking of affidavits and bail in civil causes, depending in the

1771.

Courts of the United States,'" passed March 1st, 1817, and the Act entitled "An Act to establish the Judicial Courts of the United States," passed September 24th, 1789, did call and cause to be and appear personally before me, at my office, at the new City Hall, in the City of New York, in the said Southern District of New York, in the State aforesaid, Richard McGovern, to testify and the truth to say, on the part and behalf of the claimants, in a certain suit or matter of controversy, now depending and undetermined, in the District Court of the United States for the Southern District of New York, at the city of New York in the District aforesaid, wherein Noah Dickinson *et al.*, are libellants, against the schooner Catharine, her tackle, &c. And the said Richard McGovern being about the age of thirty-two years, and having been by me first cautioned and sworn to testify the truth, the whole truth, and nothing but the truth, in the matter of controversy aforesaid, I did carefully examine the said Richard McGovern, and he did thereupon depose, testify, and say as follows, viz:—

I am a seafaring man and bound on a voyage to sea; I am going to Philadelphia; I was on board the schooner Catharine at the time of the collision; it took place about 10 minutes past 8 o'clock, in the evening; I was reefing the mainsail; I did not see the vessel San Louis till after she struck; when I saw her she was across our bows.

Q. How was the San Luis then heading, off or on shore, or how?

A. I can't tell to a point how she was heading; she was across our bows and must have been heading that way; we were heading north by east.

Q. Had your vessel any light?

A. Yes, sir; it was made fast to the jibboom under the bowsprit; that is where we always make a light fast.

Q. Was there any better place to put this light?

A. No, sir; not where it could be seen; I never knew it put in any other place when a vessel is running.

Q. Had the San Luis any light?

A. I could not swear they had not; I only have it from the mate, who said he never carries a light; that he don't believe in it (obj. to); he said that the night he came aboard our vessel when he left the schooner.

Q. Did you hear any conversation of the mate of the San Luis that night, as to to his seeing your light? or what course he took on seeing it? (Obj. to.)

A. I heard him say he saw our light; I did not hear him say what his course was.

Q. What I wish to ask is, did you hear the mate say anything about whether he had put his wheel up or down? (Obj. to.)

A. Yes, sir; he said he had his wheel down; that is, he said he had his wheel down when he struck us.

Q. What is the effect of putting the wheel down?

A. It puts the vessel about on the other tack.

Q. Do you recollect how the wind was that night?

A. I think about west—if I am not mistaken.

Q. About how far were the vessels from the shore?

A. I don't know; we were near enough to see the shore; that is all I can say.

Cross-Examination.

Q. Had the Catharine a lookout forward?

A. I would not like to swear to it; I was reefing at the time; I didn't look to see; we were all at work; so far as I was concerned, I was at work.

Q. What were you all doing?

A. I can't say what we were all doing; all I can answer is for myself.

Q. Don't you know what any of the rest were doing?

A. I know what the mate was doing; he was on the main-boom; we were both at work together; that is all I can answer for.

Q. As near as you can judge, how far off was the shore?

A. I wouldn't like to say; I wouldn't judge it was more than 7 or 8 miles; I couldn't say.

Q. Did anybody cry out before the Catharine struck the San Louis?

A. Yes, sir; Philip Arthur sung out two or three times before we struck; I don't know what he said.

Q. After he first sung out, was anything done on board the Catharine to prevent the collision?

A. I couldn't tell.

Q. Was your wheel shifted?

A. I can't tell; I wasn't at the wheel.

Q. How was your vessel heading?

A. I don't know; her course was north by east; that was our course all day.

Q. Had not the course been altered all day?

A. No; not that I know of.

Q. Do you know anything about it?

A. I ought to know.

Q. With one light hanging under the bowsprit, could another vessel tell what way you were steering?

A. I don't know what another vessel could do; I think I could tell which way a vessel was steering.

Q. How could you tell?

A. By watching the vessel and seeing her course.

Q. If you couldn't see the vessel, and the light was before you, could you tell whether it was coming towards you or going from you?

A. Any man could tell; if it was going from you, it would go

out of sight; and if it were coming towards you, the light would increase.

Q. Did you ever know of a vessel having two lights of different colors, one on each side, in order that you might tell which way she was going?

A. I have known steamers to do it, not sailing crafts.

Q. When did you first make the land that day?

A. I can't tell.

Q. After you made the land, wasn't your course altered?

A. I think not.

Q. Did you see Cape May?

A. I don't think I did.

Q. How far off was your main sheet?

A. I can't say, we were going free, the sheet was hauled aft to reef.

Q. After you got to the Hook, did you heave to or turn back?

A. It wasn't my watch; I believe we hove to.

Re-direct.

Q. Was there any time, after you heard Arthur sing out, to have done anything on your part to avoid the collision? (Objected to.)

A. There was not.

Cross-Examination Resumed.

Q. Did not Arthur, when he first sang out, sing out luff?

A. I don't know what he sang out.

his
RICHARD + McGOVERN.
mark.

Examination taken, reduced to writing, and by the witness subscribed and sworn to, this 28th day of April, 1852, before me,

JOSEPH BRIDGHAM,
U. S. Commissioner.

UNITED STATES OF AMERICA,

SOUTHERN DISTRICT OF NEW YORK,
City, County, and State of New York, ss:

Be it remembered, that on this twenty-eighth day of April, in the year of our Lord one thousand eight hundred and fifty-two: I, Joseph Bridgham, a Commissioner duly appointed by the Circuit Court of the United States for the Southern District of New York, in the Second Circuit, under and by virtue of the Acts of Congress, entitled "An Act for the more convenient taking of affidavits and bail in civil causes depending in the Courts of the United States," passed February 20, 1812, and the Act of Congress, entitled "An Act, in addition to an Act, entitled 'An Act for the more convenient taking of affidavits and bail in civil causes de-

pending in the Courts of the United States,'" passed March 1, 1817, and the act entitled "An Act to establish the Judicial Courts of the United States," passed September 24, 1789, did call and cause to be and personally appear before me, at my office, at the new City Hall, in the city of New York, in the said Southern District of New York, in the State aforesaid, Adoniram J. Lancaster, to testify and the truth to say on the part and behalf of the claimants in a certain suit or matter of controversy, now depending and undetermined, in the District Court of the United States, for the Southern District of New York, at the city of New York, wherein Noah Dickinson is libellant, against the schooner Catherine, her tackle, &c., and the said Adoniram J. Lancaster being about the age of twenty-three years, and having been by me first cautioned and sworn to testify the truth, the whole truth, and nothing but the truth, in the matter of controversy aforesaid, I did carefully examine the said Adoniram J. Lancaster, and he did thereupon depose, testify, and say as follows, viz:—

I am a seafaring man and bound on a voyage to sea; I reside at Hancock, Maine; I was steward on board the Catherine at the time of the collision; I was assisting to reef at the mainsail at the time; the wind was about west by south or west southwest; I don't know how the Catherine was heading, our course all day had been north by east; we were running along the shore; I first heard Arthur sing out hallo, or some such thing; I was standing on top of the house cabin on the leeward side of the vessel; the first I saw was the San Luis jibs; she struck in less than half a minute; she was heading towards the shore, I believe; we struck the San Luis about midships head on.

Q. Did you hear any conversation between the mate of the San Luis and any other person on the subject of his having seen you, or what he did when he saw you? (Objected to.)

A. I heard him say he saw our light; I don't know that I heard him say what he did.

Q. Did he say anything about luffing or keeping away? (Objected to.)

A. He said they luffed.

Q. Did he say what he did it for? (Objected to.)

A. He said he thought to go by our bows and go clear.

Q. Did you know where the captain of the San Luis was when this conversation occurred with the mate?

A. He was in our cabin, and the mate was there too.

Q. Did the San Luis have any light?

A. No, sir.

Q. How many men were on the deck of the San Luis at the time?

A. The mate said there were two men. (Objected to.)

Q. What became of the San Luis men when you struck?

A. They came aboard of our schooner.

Q. Do you know of anything being done by the crew of the San Luis to save her?

A. No, sir; I don't know of anything.

Cross-Examination.

Q. Did the Catherine shift her wheel?

A. I don't know, sir.

Q. Did she luff?

A. I don't know; I guess not; there wasn't time for her to luff.

Q. Didn't Arthur call out, to luff?

A. I don't know what he said; I heard him sing out.

Q. How far could you see a vessel at that time?

A. I suppose perhaps 15 or 20 yards.

Q. Could you see the shore?

A. No, sir.

Q. Did you see any vessels under your lee?

A. I could see some lights; I couldn't see the vessels themselves.

Q. Was it starlight?

A. No, it was thick and foggy.

Q. Had the Catharine a lookout forward?

A. I don't know whether there was a lookout forward; the captain had just left the wheel and been forward, and returned to the wheel when Arthur sang out.

Q. Do you know what the captain did when he went forward?

A. No, sir, I don't.

Q. Do you know whereabouts he went when he went forward?

A. He went somewhere under the foreboom, which is aft of the foremast.

Q. Have you tattled with anybody about your testimony here?

A. No, sir; nobody at all.

Q. Where have you been staying since you arrived?

A. On board.

Q. Have you been paid anything for giving your testimony?

A. No, sir.

Q. Has anything been said to you about giving your testimony?

A. No, sir.

Q. Do you know whether anything was done on board the San Luis to save her?

A. I don't know.

Q. Do you know what damage was done to her?

A. No, sir.

Q. Had you run along the land the whole of that day?

A. I believe we had.

Q. Had you made the land that day?

A. Yes, sir.

Q. What land?

A. I don't know; I believe it was Cape May.

Q. Wasn't your course altered after you made the land?

A. Yes, sir.

Q. At what hour did you make the land?

A. I don't know; it was in the morning about 7 or 8 o'clock, as near as I can guess.

Q. Did you steer during the day?

A. No, sir.

Q. How do you know her course?

A. I don't know, only from what I heard them say on board.

Q. When you made the land, how far were you from it?

A. I don't know; about 2 or 3 miles, I supposed.

Q. Did you near the land after that?

A. I guess not much, if any.

Q. Did you hear the captain of the San Luis tell the men to get some blankets and stuff, to stop the hole?

A. No, sir.

Re-direct.

Q. You said on your cross-examination that you only knew the course of the vessel from what was said on board—do you not know whether she was following the land or not? (Obj'd to.)

A. She was following the land along.

Q. Do you mean to say that you know that, or only heard it?

A. I heard them say so on board, that we were following the shore.

Q. Did you see, during the day, that you were following the shore?

A. I thought we were following the shore.

ADONIRAM J. LANCASTER.

Examination taken, reduced to writing, and by the witness subscribed and sworn to, this 28th day of April, 1852, before me,

JOSEPH BRIDGHAM,
U. S. Comm'r.

UNITED STATES OF AMERICA,
Southern District of New York, ss.

I, Joseph Bridgham, a commissioner duly appointed by the Circuit Court of the United States for the Southern District of New York, in the Second Circuit, under and by virtue of the Acts of Congress, entitled "An Act for the more convenient taking of affidavits and bail in civil causes depending in the courts of the United States," passed February 20th, 1812, and the Act of Congress, entitled "An Act in addition to an Act entitled 'An Act for the more convenient taking of affidavits and bail in civil causes depending in the courts of the United States,'" passed March 1st, 1817, and the Act entitled "An Act to establish the Judicial Courts of the United States," passed September 24th, 1789, do hereby certify, that the reason for taking the foregoing deposition is, that the fact is, that

the witnesses are material and necessary in the cause in the caption of the said deposition named, and that they are seafaring men and bound on a voyage to sea to some port more than one hundred miles from the District of New York.

I further certify, that a notification of the time and place of taking the said deposition signed by me, was made out and served on the opposite party to be present at the taking of the deposition and to put interrogatories, if he or they might think fit.

I further certify, that on the twenty-eighth day of April, A. D. 1852, I was attended by the counsel for the respective parties, and by the witnesses, who were of sound mind and lawful age, and the witnesses were by me carefully examined and cautioned, and sworn to testify the whole truth, and the depositions by me reduced to writing in the presence of the witnesses and from their statements, and after carefully reading the same to the witnesses, they subscribed the same in my presence. I have retained the said depositions in my possession for the purpose of delivering the same with my own hand to the court for which the same were taken.

I further certify, that I am not of counsel or attorney for either of the parties in said depositions and caption named, or in any way interested in the event of the said cause named in the caption.

In testimony whereof, I have hereunto set my hand and seal, this twenty-eighth day of April, in the year of our Lord one thousand eight hundred and fifty-two, and of the Independence of the United States the seventy-sixth.

JOSEPH BRIDGHAM,

U. S. Com. duly appointed by the Circuit Court of the U. S. for the Southern District of New York, in the Second Circuit.

Vol. 10, 91. United States District Court for the Southern District of New York. Noah Dickinson et al. *vs.* The Schooner Catharine, her tackle, &c. Depositions on the part of the Claimants, taken before Joseph Bridgham, United States Commissioner, on the 28th day of April, 1852. 194.

Filed the 29th day of April, 1852.

RICHARD McGOVERN,
ADONIRAM J. LANCASTER.

$14.37.

UNITED STATES OF AMERICA,

SOUTHERN DISTRICT OF NEW YORK,
City, County, and State of New York, ss.

Be it remembered, that on this twenty-seventh day of April, in the year of our Lord one thousand eight hundred and fifty-two, I, Joseph Bridgham, a commissioner duly appointed by the Circuit Court of the United States for the Southern District of New York, in the Second Circuit, under and by virtue of the Acts of Congress,

entitled "An Act for the more convenient taking of affidavits and bail in civil causes depending in the courts of the United States," passed February 20th, 1812, and the Act of Congress, entitled "An Act in addition to an Act entitled 'An Act for the more convenient taking of affidavits and bail in civil causes depending in the courts of the United States,'" passed March 1st, 1817, and the Act entitled "An Act to establish the Judicial Courts of the United States," passed September 24th, 1789, did call and cause to be and personally appear before me, at my office, at the new City Hall in the city of New York, in the said Southern District of New York, in the State aforesaid, Philip Arthur, to testify and the truth to say, on the part and behalf of the Respondent in a certain suit or matter of controversy, now depending and undetermined, in the District Court of the United States for the Southern District of New York, at the city of New York, wherein Noah Dickinson et al. *vs.* The Schooner Catharine, her tackle, &c.

And the said Philip Arthur, being about the age of twenty-five years, and having been by me first cautioned and sworn to testify the truth, the whole truth, and nothing but the truth, in the matter of controversy aforesaid, I did carefully examine the said Philip Arthur, and he did thereupon depose, testify, and say as follows, viz:

I am a seafaring man, and may ship at any time. I was on board the Catharine as seaman on her voyage from Barcelona, South America, to this port. I recollect the night of the collision; all hands were on deck at the time; the Catharine had a light hanging at the flying jib-boom; it was placed there because we were going before the wind—it was a free wind; that was the best place for a light with a vessel running with a free wind. The course of the Catharine was north by east—that was the way we were steering; I had been so steering for 12 or 14 hours; I was to the leeward of the main-boom, and saw the San Luis directly ahead; she was right athwart our bow—she was right close to us; it was hard to say how far she was off; as soon as I saw her and halloed, she struck us—hazy, misty sort of a night—dark. The San Luis had no light that I saw; I know she had none, because, when she smashed ours, I asked for hers to hang up in our rigging to keep other vessels off, and the steward told me it was in the locker below. (Obj'd to.)

Q. Did any of the crew come on board your vessel? and if so, when?

A. Yes, sir; one came on board as soon as we struck; shortly after, three others followed; the captain and mate came aboard, after we got clear of them, in a boat.

Q. Did they make any exertion to save the vessel, that you saw?

A. No, sir, not that I saw.

Q. Did you have any conversation with the mate? or were you present at any conversation in which the course of the San Luis was spoken of? (Obj'd to.)

A. Yes, sir, I had a conversation with the mate of the San Luis.

Q. When was that, and what was said?

A. It was on the following morning; he said that he saw our light a few minutes before we struck, and he thought he would be able to fetch to the windward of us, and that he threw his wheel down and in a few minutes he would have been clear of us; but we struck her.

Cross-Examined.

The Catharine was, I should suppose, 140 or 150 tons, as near as I can guess; she had three men before the mast, and captain, mate, and steward—six persons in all. The Catharine had a look-out; I was looking out at the leeward; I was standing on the break of the quarter-deck; I was leaning against the mainsail which I had just cleared, looking out. I was not stationed to look out, it was my watch below. The Captain *was* looking out, and I was looking out at the leeward. It was the Captain's watch on deck. The Captain was standing on the break of the quarter-deck; I don't say he was there all the time; he was there when the collision took place, or just before. I can't say that anybody was forward of the foremast. At the time I had been forward of the foremast, ten minutes before on the topgallant forecastle. All hands had been forward of the foremast in less than half an hour before. I had been on the topgallant forecastle from 6 to 8 o'clock, looking out; I had left at 8 o'clock; it was John's look-out then, and he took my place. I can't say whether he went up on the forecastle or not. I don't know where he went. I don't know, if he was on the look-out when the vessel struck. I don't know where he was then; I saw him one minute after the vessel struck. All hands were then forward of the foremast. I had just jumped there, and they were there when I got there; how they got there I can't tell; we had just been reefing the mainsail. All hands were called to reef; can't tell, if all went aft to reef. I can't say that all six were reefing the mainsail. The Captain was not engaged in reefing; he was on the quarter-deck; he had given the orders to reef before. The mate was reefing. I don't know his name. The steward was reefing. John and Richard McGovern were the names of the two men besides myself. I don't know if John and Richard were engaged in reefing.

Q. Had you been engaged in the reefing?

A. I had just cleared; I had done nothing else but this. We reefed, because it was a dark, squally, and rainy night. The stars were visible at times. We could but see a very short distance, not half a mile, and, I should think, not a quarter at times. Just before the collision, the San Luis could have been seen but a short distance; can't say how far; I should not think half a mile. I don't know that our helm was shifted before we struck; I shouldn't think we had time. I don't know of any order to shift the helm. We struck the San Luis about midships; it was on the larboard side. The

vessels remained foul some time; about twenty minutes. I can't say that any of our men went on board the San Luis to help them; I did not. I don't know whether the San Luis had come into the wind, or was going about when we struck. The San Luis was heading right on shore when we struck her, and she was so heading when I first saw her. We struck as soon as I saw her. I don't know who was at the helm when we struck. Don't know that any body was there. We had not finished reefing the mainsail. Didn't hear the Captain say he *was* shortening sail, because he wasn't acquainted with the Hook, and didn't want to get up there before morning. The weather was changeable; it had changed within an hour; getting darker and misty. It began to get misty just before we reefed the mainsail; the change was between 6 and 8 o'clock. I can't say whether it had been rainy and misty and dark for more than an hour. The wind was blowing in squalls; I think it was on the increase. Didn't see vessels with topsails and staysails set within an hour before, that I recollect; had seen vessels within the hour with short sails set—they had not full sail on; saw probably two or three vessels within an hour. I think, the San Luis was under full sail. I heard the Captain of the Catharine ask the Captain of the San Luis to cut away the lanyards of her main rigging that we might get clear without more damage; they were cut away, but not immediately. The Captain of the San Luis was afraid he would lose his mast if he cut away his rigging.

Q. Did you hear the Captain of the San Luis say she was filling fast, and they could not save her?

A. No, sir. The Captain said, he would go and try and save her, if the crew would go with him; and he thought he could save her, and he said, there were but two—himself and mate—and they could do nothing. This he said on our quarter-deck, after he and the mate had come on board our vessel.

Q. Why didn't the rest of his men go?

A. They were afraid the San Luis might sink.

Q. Do you know that the Captain of the San Luis asked the men to go with him, and that they refused, because it was not safe?

A. I heard him ask his men to go, and didn't hear them refuse; but they did not go.

Q. Did you hear the Captain of the San Luis say, after he came on board the Catharine, "that, if his men had gone, they could not have saved her?" (Objected to.)

A. I don't remember that; I did not hear it.

Q. Did you hear the Captain of the Catharine tell the Captain of the San Luis that the Catharine had no look-out?

A. I did not.

Re-direct.

Q. How far could you see a light that night?

A. Probably a quarter of a mile.

Q. What time did the collision take place?

A. As near as I can judge, about ten minutes past 8 o'clock.

Q. You say that the San Luis could have been seen but a short distance off; do you know whether any one on board your vessel saw her before you did?

A. I think they did not. I sang out first.

PHILIP ARTHUR.

Examination taken, reduced to writing, and by the witness subscribed, and sworn to this 27th day of April, 1852, before me

JOSEPH BRIDGHAM,
U. S. Commissioner.

UNITED STATES OF AMERICA,
Southern District of New York, ss:

I, Joseph Bridgham, a Commissioner, duly appointed by the Circuit Court of the United States, for the Southern District of New York, in the Second Circuit, under and by virtue of the Acts of Congress, entitled "An Act for the more convenient taking of affidavits and bail in civil causes, depending in the Courts of the United States," passed February 20, 1812, and the Act of Congress, entitled "An Act, in addition to an Act, entitled 'An Act for the more convenient taking of affidavits and bail in civil causes, depending in the Courts of the United States,'" passed March 1, 1817, and the Act, entitled "An Act to establish the Judicial Courts of the United States," passed September 24, 1789, do hereby certify, that the reason for taking the foregoing deposition is, and the fact is, that the witness is material and necessary in the cause in the caption of the said deposition named, and that he is a seafaring man, and may ship at any time for some time more than one hundred miles from the District of New York. I further certify, that a notification of the time and place of taking the said deposition signed by me, was made out and served on the opposite party to be present at the taking of the deposition, and to put interrogatories, if he or they might think fit.

I further certify, that on the 27th day of April, A. D. 1852, I was attended by counsel for the respective parties and by the witness, who was of sound mind and lawful age, and the witness was by me carefully examined and cautioned, and sworn to testify the whole truth, and the deposition was by me reduced to writing, in the presence of the witness and from his statement, and after carefully reading the same to the witness he subscribed the same in my presence. I have retained the said deposition in my possession for the purpose of delivering the same with my own hand to the court for which the same was taken.

I further certify, that I am not of counsel or attorney for either of the parties in said deposition and caption named, or in any way interested in the event of the said cause named in the caption.

In testimony whereof, I have hereunto set my hand and seal, this twenty-seventh day of April, in the year of our Lord one thousand eight hundred and fifty-two, and of the Independence of the United States the seventy-sixth.

JOSEPH BRIDGHAM,
U. S. Commissioner Circuit Court of the U. S.
for the Southern District of New York.

Vol. 10, No. 91. United States District Court for the Southern District of New York. Noah Dickinson *et al.* vs. the schooner Catharine, her tackle, &c. Depositions on the part of the respondent taken before Joseph Bridgham, United States Commissioner, on the 27th day of April, 1852.

Filed the 29th April, 1852.
$12 50. PHILIP ARTHUR.

Defence continued.

Alexander Baker. Follows the sea on board the Catharine; was mate from Barcelona, Spanish Main, to New York; collision about 20 minutes past 8 P. M.; Catharine had been steering north by east; I was reefing at the time of collision; the mainsail was down.

The first I heard was, Philip Arthur said there was a vessel under the bow; I was on the main boom; I turned round but did not see her; I was on the starboard side; when I got on the taff-rail, saw her jib on with ours.

When I got on deck she struck: our vessel struck head on; San Luis, when we struck, was right in the wind; Catharine did not change her course that I know of; could not change her course quick with her mainsail down.

Cross-examined. Some vessels had reefs, some with whole sails; we were reefing because there was too much wind; don't know that didn't want to get into the Hook too early; we stood off and on; when we came to the Hook, Captain said it was morning, and ordered us to reef; captain's watch began at 8 o'clock.

Richard McGovern and John were with him in his watch; captain was at the wheel; all hands were called to reef; I was on deck when the order was given to reef; before we went below, the orders were to reef; as soon as the captain came up orders were given to reef; the captain was not all the while at the wheel; when he was not at the wheel, no one was at the wheel; captain left the wheel several times while we were reefing; did not set all the mainsail down; all was down except the when the collision took place; when we hauled in the boom the captain was at the wheel; captain did not put the wheel down; he might have altered her course without my knowing it.

When I saw compass at 8 she was steering north by east; steering that course, when the mainsail was down, different courses dur-

ing the day; wind was right aft; don't know that the captain altered her course from 8 to the time of the collision.

Not the practice of our vessel to bring the vessel into the wind when we reef; wind blowing hard.

From 8 to the time the sail was taken in, 15 to 30 minutes.

Philip Arthur may not have helped get in sail; three aft with me, were Richard, John, and the third one with me on the mainsail.

Arthur helped us to lower away the sail; had not reefed when we struck; John had been sick some.

Captain at the wheel when she struck; can't swear he had been there a minute; I was 3 feet from the tiller when she struck; when I got on her main boom, the captain was not at the wheel.

Philip Arthur helped lower the mainsail; suppose others helped; John and Richard helped haul in the sheet.

Arthur was then by the main rigging: I helped on her sheet; when we got the sheet in, then we lowered away again.

Arthur was at the larboard attending the halyards when we got the sail lowered; I got on the main boom; the captain was at the wheel.

After I got on the main boom, I turned round and he was not at the wheel.

Did not see him at the wheel after I got on the main boom; I was on the main boom when Arthur sang out there was a vessel, and then I saw the captain at the wheel.

A vessel with the mainsail half down could not change her course so quick; the Catharine was dull in changing her course; saw several lights at the time of the collision; heard the captain of the San Luis request the captain of the Catharine to keep with her; I thought I saw the San Luis after that, but am not certain; might have took half an hour or more to get up her sails; could not put up all the sails in twenty minutes; can't say we stood off and on before we got to the Hook.

Direct. Saw John some time last week; don't know where he came from; captain went after him here; he was here between three and five days.

Benjamin Ferris. Follows the seas as master; master off and on for twelve years; been master of brigs and schooners; knew the Catharine, acquainted with the navigation of the coast. When reefing the captain keeps all the lookout that is kept.

Cross-examined. That is the usage; know the usage; a great many vessels between Barnegat and Sandy Hook; a custom to keep a lookout between Sandy Hook and Barnegat; a custom at sea to keep a lookout; his place to lookout is before the foremast; a custom to take away the lookout when we are reefing; this is my practice; don't know the general custom; not usual to bring a vessel into the wind when we reef; do sometimes; if the wheel is left

ordinary vessels would change their course in a few minutes; three men could reef a sail.

For Plaintiff, John H. Williams.

Would take ½ an hour to reef and get the sails on to the vessel; had sailed 2 miles before the Catharine got her sails on ready to follow; we pulled in the coast 2 miles before we got on board the Catharine; wind not blowing hard enough to reef; we thought of setting the topsails; the Catharine stood off and on before she got into the Sandy Hook; heard the captain say he had no lookout; asked him how he came to run into us; he said all hands were aft, to change watch; always the custom to have a lookout when we reef; always have a lookout when we reef.

Cross-examined. Catharine lying to when we went on board; saw a light before we struck; hailed the Catharine, but received no answer.

Direct. Not the custom to carry a light on that coast.

James Myers. Follows the seas; have been a master in the coasting trade; been so more or less for 15 years; never heard of a custom to take away the lookout, when reefing at sea; not prudent to leave the wheel at night, or on any occasion; not customary for vessels at sea to carry a light, and is not safe.

Cross-examined. Not safe for any vessel to carry a light; when I reef I call all hands; sometimes I call the lookout man off, but it is wrong; with her head sails set the tendency is to carry her aft; the tendency of the wheel when not is to go down; never knew a wheel to go up.

Direct. When I call all hands, it is a call for all to come on deck.

Jonah S. Foltam. Master of a vessel for 20 years; mostly in North Carolina trade; keep a lookout at all times, except when called off to reef; generally call them all to reef; then generally try to keep a look ahead; there is no custom of carrying lights.

Mr. Field argues for libellants, Mr. Betts argues for respondents.

Curia advisare vult.

At a stated term of the District Court of the United States of America, for the Southern District of New York, held at the City Hall in the city of New York, on Tuesday the fourteenth day of June, in the year of our Lord one thousand eight hundred and

Present, the Honorable Charles A. Ingersoll, District Judge.

1778.

NOAH DICKINSON and others
vs.
THE schooner CATHARINE, her tackle, &c. } 10, 91.

This case having been heard on the pleadings and proofs, and argued by the advocates for the respective parties, and due deliberation being had in the premises, it is now ordered, adjudged and decreed, by the Court, that the libellants recover in this action against the schooner Catharine, her tackle, &c., the damages sustained by the collision, in the pleadings mentioned, and that the said schooner, her tackle, &c., be condemned therefore.

And it is further ordered, that it be referred to a commissioner, to ascertain and compute the damages aforesaid, and to report thereon to this court, with all convenient speed.

Vol. 10, No. 91. United States District Court, for the Southern District of New York. Noah Dickinson *et al. vs.* the schooner Catharine, her tackle, &c.

Decree, and referred to Com'r.

Filed the 14th June, 1853.

DISTRICT COURT OF THE UNITED STATES,
for the Southern District of New York:

NOAH DICKINSON and others
vs.
The schooner CATHARINE, her tackle, &c. } Notice of reference.

In conformity with the order entered in the above entitled cause, you will please to take notice that the reference ordered therein will be proceeded with, before me, a commissioner duly appointed by the Circuit Court of the United States, for the Southern District of New York, under and by virtue of the acts of Congress in such case made and provided, at my office at the United States Courts, in rear of the City Hall, of the city of New York, on the twentieth day of June, instant, at twelve o'clock in the forenoon of that day, at which time and place you are hereby notified to attend, with the testimony you may have to offer in the matter referred.

Dated New York, the 16th day of June, A. D. 1853.

Yours, &c.

GEO. W. MORTON.

United States Commissioner duly appointed by the Circuit Court of the United States, for the Southern District of New York, in the Second Circuit.

Endorsed 10, 121. District Court U. S. Noah Dickinson and others *vs.* The schooner Catharine, &c. No. of reference.

UNITED STATES DISTRICT COURT.

NOAH DICKINSON and others
vs.
The Schooner CATHARINE, her tackle, &c. } 10, 91.

June 20, 1853.

The proctors for the respective parties being present, the libellant proceeds with the reference.

William S. Tyler, being sworn, says: That he knew the San Luis when she was built and at the time she was lost, at which time she was worth $6,200 to $6,300; I saw her about every trip she made; she had a new set of sails the spring she was lost. The sails were worth $500, and perhaps more; at least she had some new rigging that spring, also a staysail and jib or jibs; the value of the furniture in her was from $75 to $100; I am familiar with the value of vessels; I am a builder; I built a vessel the same year the San Luis was launched, of about the same dimensions, and with the same boss carpenter; she was a cheap vessel at $8,600.

On his Cross-Examination, he says: 62 or $6300 was the value of the San Luis at the time she was lost; the vessel we built we made about $1,000 profit including our time about a year from the time we commenced cutting timber; have never seen the San Luis since she went on shore.

On further direct: From the time the San Luis was built until she was lost she was always laid up in the winter.

WM. S. TYLER.

Christopher Tyler being sworn, says: That he has been in the habit of buying and selling vessels, and knew the San Luis; I saw her to examine her about two years previous to her being lost; I then considered her worth about $8,000; I have seen her passing up and down the river.

On his Cross-Examination. Has an interest now in two or three vessels; has bought three or four vessels; Wm. & H. T. Tyler built the San Luis; has never seen her since the collision, and do not know where she now is.

CHRISTOPHER TYLER.

Jonathan S. Dickinson sworn, says: He is a coaster and commands a vessel; knew the San Luis at the time of the collision, she was then worth $6,500 or $6,600; that was her value just as she stood, including everything; I made this calculation from a vessel I built, the only one I ever built; the San Luis carried five tons more coal than my vessel; my vessel is not more than four years old until next May; my vessel is worth $7,500; I knew that the San Luis had new sails a short time before the collision; I was intimate with Captain Williams, and was frequently on board of her the trip before she was lost, and think I was on board of her the same trip.

On his Cross-Examination. I did not take such particular notice to say whether she had new or old running rigging; I knew that she had new sails.

J. S. DICKINSON.

The Deposition of J. M. Brown is offered in evidence and objected to by the respondents; objection overruled and deposition admitted.

Adjourned until Tuesday, 28th, at 10 A. M.

Tuesday, June 28, 1853.

The proctors for the respective parties being present, the claimant proceeds with his testimony.

Morris Freeman sworn, says: He knows the schooner San Luis, the one that was ashore on Squam Beach; I expect I am interested in her, verbally; I do not know who were her owners; Mr. Dickinson, now present, was reputed to by me one of the former owners. The vessel is now at the foot of Gold Street, Brooklyn; that is the same vessel that Mr. Dickinson was former owner of; I was down at Squam Beach when Mr. Dickinson came down there, while the vessel was ashore; they made efforts to get the stone out of her; they tried to get men to take the stone out of her either for hire or for salvage; they could not get the men to do it; they would only do it in one fashion, that was for wrecking wages, and I don't believe they could get them to do it for that; they made no efforts to get the vessel off that I know of, except asking me what I would do it for, and I could not fix any price until the stone was got out of her; I offered to take the vessel and all that belonged to her, stone and all, and save all I could of her for ⅔ of what I could save; they did not say whether they would accept my offer or not, and did not make me any offer; I got her off afterwards, that is, I was boss of the job; she is still under repairs; John M. Brown and Benjamin D. Pierce, have been the managing owners of her since she was got off; Mr. Brown is in New Jersey, Mr. Pierce is in New Jersey, also, I expect; the San Luis has been in port of New York since the 11th of June; previous to that time she was on the south part of Staten Island, at a place called the Great Kills; I have never seen Mr. Dickinson until this morning, since I saw him on the beach.

Cross-Examined. When the vessel lay on the beach her sails and rigging were on her; did not see her when she came ashore; I saw her first the next morning; she was then lying stranded with the sea breaking over her; her foremast was standing but the step was broken, and the mast was hanging by the main rigging, that is the spring stay; starboard forerigging carried away and foresail torn. Mr. Dickinson asked me to name a sum that I would get her off for; I did not do it; it took, I think, a week to get her off; the weather was quite favorable, had it not been we should never have got her off; could have got her off in ordinary weather.

MORRIS FREEMAN.

June 29, 1853.

Adjourned until 10 A. M. to-morrow, Wednesday, June 29. The proctors for the respective parties being present, the libellant proceeds with the reference, and recalls

Morris Freeman.

Was not the San Luis in a very bad situation on the beach, to be got off?

At one time she was, she lay in the under tow; we did cut away the foremast.

What would you have charged to get her off? (Objected to.)

I could have charged one thousand dollars to get her afloat.

Would there not be a risk of her going on shore after she was got afloat?

That I cannot say; it would depend on the weather.

Is she worth as much now as the expense of getting her off and repairing her? (Objected to.)

I should think she was.

Could the owners have got her off as cheaply as yourself and Brown?

I do not think they could, as they were strangers in the place.

On his Cross-Examination.

Do you use the old sails in repairing her?

Certainly, and we use a part of the rigging, not the running rigging; it has to be overhauled, and where it requires replacing with new we calculate to use new; the vessel has not been thoroughly overhauled; she is now in the act of overhauling; we consider the overhauling we are giving her a thorough overhauling; by my books at home I can tell pretty nearly what it costs to get her off, and I can get the bills of repairs for the work done upon her; my custom is to name a price in dollars and cents for what I will get a vessel off.

Did these parties make you any offer to get this vessel off?

They did not.

Were they not anxious to sell the vessel to you? (Objected to.)

They asked me to make them an offer; I do not know how anxious they were.

Were you able to purchase the vessel? (Objected to.)

I did not consider I was; I told them so, or I should have made them the offer; the three-quarters that I offered to get her off for, was the ¾ of her value when got off.

On further Examination. The wind was blowing off shore when I first saw her; when Mr. Dickinson was there I think the wind was from the eastward, but am not positive; that was on Sunday.

What in your opinion was the vessel worth when on shore?

That is not a fair question, and I cannot say what she was worth.

What would you have given for her as she lay? (Objected to.)
If I had had money I would have given 100 dollars for her.
MORRIS FREEMAN.

Adjourned until Friday at 10 A. M., the first of July next.

July 1, 1853.

The proctors for the respective parties being present, the claimant proceeds with his testimony.

Evidence for the Claimant.

Oren Crowell sworn, says: He is master of a vessel; has followed the water for 28 years in brigs and schooners; I have built a vessel, and have seen many built; I was on board the San Luis this morning; I went on board down in the hold, and went around her on the stage; she is now under repair, and my judgment is that, when the repairs are completed, she will be worth more than she was before the collision.

On his Cross-Examination: Never saw her before to-day; I saw that they had made additions to her which she had not before; they are at work in the cabin and forward; they have put in stringers on each side; they have put in 15 new stanchions on the larboard side; they have spliced the main-hatch beams on account of their being rotten on the ends; new wales on the larboard side; I could not see her bottom; she is afloat; new ceiling in the larboard side; a good many new beams on the larboard side; I built but one vessel, the schooner Luis; I have repaired a vessel that had been on shore; the schooner Splendid; she got ashore on Nantucket shoal; she cost me about 500 dollars to repair her; she knocked off her rudder, started her sternpost, and knocked off all her

The San Luis has only her mainmast in; no rigging on; no sails bent; but some sails in her hold.

OREN CROWELL.

Benjamin A. Crowell sworn, says: His age is 38 years; has followed the sea since I was 13 years of age; I have been master; generally sailed schooners; saw the San Luis this morning; I went all over as far as I could go to see how she looked; they were at work repairing her; I should judge that she will be of no less value after the repairs than she was at the time of the collision; I should judge she would be rather better if anything.

Can you judge now from looking at her what was her condition before the collision?

I don't think I can; the old work does not appear strained any great deal.

Was it strained any?

Not to appearance; I could not see any.

Are there any effects of the collision visible that have not been in process of repair?

There is not; except her billet-head is gone and no one is repairing it.

Cross-Examined: I never saw the San Luis before; she will have a good deal of new wood about her, and has already; it is in that respect she will be better than before and be recalking.

B. A. CROWELL.

Testimony closed on both sides.

Claimant contends,

1. The decree is for the damage occasioned by the collision, not for the value of the vessel; no evidence has been given of the amount of damage; the commissioner has no evidence to report anything except nominal damages.

2. It appears the vessel was got off and the damages repaired.

3. The sale on the beach does not in any way bind the libellant; the wreck-master was not consulted, and though the sale was made after the libel was filed, no notice whatever was given to the respondent, or any application made to him; the vessel was sold without notice at private sale.

Libellants contend,

1. That the vessel was totally lost; such is the allegation of the libel, and such is the proof; the deposition of Brown for the libellants proves that; the deposition of Freeman, the claimant's own witness, is substantially to the same effect; the libellants therefore claim the value of the vessel, less the amount they got for the wreck; the value is proved to have been $6,500; the wreck was sold for $140; deducting that from the $6,500, leaves $6,560; the libel claims for $6,200, and for that with interest from the time of filing the libel, the commissioners should report.

2. The fact that the wreck was finally got off and built up again does not affect the libellant's rights; they are to be determined by the state of the facts at the time of filing the libel; at that time the vessel was a total wreck; her whole value was not more than the libellants got for her (that is the $140); it probably cost to get her up and repair her as much as she is worth.

3. The sale of the wreck on the beach by the libellants was perfectly justifiable; they were not bound as prudent persons to run the risk of attempting to get her off and build her up again; all that they can be charged with is her fair value at the time.

4. If, however, the commissioner should be of opinion that the onus probandi is with the libellants to show the expense of raising the vessel, repairing her, then the libellants reserve the right of introducing further proof.

Indorsed 299, 10, 91. U. S. District Court, Noah Dickinson *vs.* the schooner Catharine, her tackle, &c.

J. S. SLUYTER,
for Libellants.

BETTS & DONOHUE,
for Claimants.

$57 25. Testimony on reference.

DISTRICT COURT OF THE UNITED STATES,
For the Southern District of New York:

NOAH DICKINSON and others
vs.
The Schooner CATHARINE, her tackle, &c. } Comm'r's Report.

In pursuance of a decretal order made in the above entitled cause, on the fourteenth day of June, in the year of our Lord one thousand eight hundred and fifty-three, by which, among other things, it was referred to the undersigned, one of the commissioners of this Court, to ascertain and compute the amount due the libellant for the damages sustained by the collision in the pleadings mentioned, and to report thereon to this Court with all convenient speed—

I, George W. Morton, the commissioner, to whom the matter was referred, do report, that I have been attended by the proctor for the libellant and claimant and by the witnesses, and have taken and examined the testimony offered in support of the libellant's claim for the damages sustained by the collision, and do find that there is due to the libellant for the damages aforesaid, the amount claimed in the libel, to wit: the sum of six thousand two hundred dollars.

Dated the ninth day of July, A. D. 1853.

All which is respectfully submitted,

GEORGE W. MORTON,
U. S. Comm'r.

JAMES S. SLUYTER.
Proctor for Libellant.

Vol. 10, No. 91. United States District Court, for the Southern District of New York. Noah Dickinson, *et al.* vs. The Schooner Catharine, her tackle, &c. Proctor for libellant. Commissioner's report.

Filed the 19th day of July, 1853.

UNITED STATES DISTRICT COURT.

NOAH DICKINSON, &c.
vs.
The Schooner CATHARINE, her, &c.

Exceptions to Commissioner's Report, and to confirmation thereof:

First. The commissioner has reported for an amount far exceeding the damages herein.

Second. That the commissioner has reported the value of the vessel, and not the amount of damages.

Third. That the rule of damages adopted by the commissioner is erroneous.

Fourth. That the decree herein is a nullity, the Judge before whom the cause was tried being unauthorized to make the same.

BETTS & DONOHUE.
Proctors for Respondents.

Indorsed U. S. District Court. Noah Dickinson, &c., *vs.* Schooner Catharine. Exceptions.

BETTS & DONOHUE,
For Respondents.

Filed July 19, 1853.

DISTRICT COURT OF THE UNITED STATES,
Southern District of New York.

NOAH DICKINSON and others
vs.
The Schooner CATHARINE, her tackle, &c.
COLLINS, master, &c.

GENTLEMEN: The argument of the motion to confirm the commissioner's report in this case, and of the exceptions to the same, will be brought on before Judge Ingersoll at the City Hall, on Thursday next, at 11 o'clock A. M., or if the Court will not hear the argument on that day, then on Saturday next, at 11 o'clock A. M.

Yours, &c.,

JAMES S. SLUYTER,
Proctor for Libellants.

BETTS & DONOHUE,
Proctors for Respondents.

Indorsed: 10, 91. U. S. District Court. Noah Dickinson and others *vs.* The Schooner Catharine, &c.

Filed July 23, 1853.

No. of mo. to confirm Commissioner's Report. City and County of New York. George F. Richardson, of said city, being sworn, saith that on the 19th July instant, he served a copy of the within notice on Mr. Donohue personally at his office, 76 Wall Street, who received the same; that afterwards he handed it back to this deponent, saying that he would not receive it, and thereupon that this deponent left the said copy upon his table.

GEORGE F. RICHARDSON.

Sworn before me, this 23d day of July, 1853.

JOSEPH BRIDGHAM.
U. S. Comm'r.

At a stated term of the District Court of the United States of America, for the Southern District of New York, held at the City Hall, in the City of New York, on Thursday, the twenty-first day of July, in the year of our Lord one thousand eight hundred and fifty-three.

Present, the Honorable Charles A. Ingersoll, District Judge.

NOAH DICKINSON *et al.*
vs.
The Schooner CATHARINE, her tackle, &c.

This cause coming on to be heard on the exceptions to the commissioner's report taken by the proctors for the claimant, and the proctors for the claimant not appearing, on motion of Mr. Field, proctor for the libellants, it is ordered that the exceptions be overruled, and the commissioner's report be in all things confirmed.

Vol. 10, No. 91. United States District Court, for the Southern District of New York. Noah Dickinson *et al.* vs. The Schooner Catharine, her tackle, &c.

J. S. SLUYTER,
Proctor for Libellants.

Order: Exceptions overruled. Report confirmed.
Filed the 21st day of July, 1853.

At a stated Term of the District Court of the United States of America, for the Southern District of New York, held at the City Hall in the city of New York, on Saturday the twenty-third day of July, in the year of our Lord one thousand eight hundred and fifty-three.

Present: The Honorable Charles A. Ingersoll, District Judge.

NOAH DICKINSON *et al.*
vs.
THE SCH'R CATHARINE, her tackle, &c.
COLLINS, Master.

This case having been heard on exceptions to the Commissioner's report, and an order entered confirming the same, on the 21st instant, and the proctor for the claimants not appearing, and due deliberation being had in the premises, it is now ordered, adjudged, and decreed by the Court, that the libellants recover in this action against the schooner Catharine, her tackle, &c., the sum of six thousand two hundred dollars, the amount reported together with their costs to be taxed, and that the said schooner, her tackle, &c., be condemned therefor.

And on motion of James S. Sluyter, Esq., proctor for the libellants, it is further ordered, that, in pursuance of the Act of Congress, passed March 3d, 1847, a summary judgment be and the same is hereby entered against Samuel Crowell, the principal, and Ezra Lewis, the surety on the bond, given on the discharge of the property arrested for the sum of twelve thousand five hundred dollars, the amount of their said bond, executed on discharging the said vessel from the custody of the Marshal.

And on like motion, it is further ordered, that, unless an appeal be taken to this decree, within the time limited and prescribed by the rules of this Court, that the libellants have their execution on the said judgment to satisfy this decree.

Vol. 10, No. 91. United States District Court for the Southern District of New York. Noah Dickinson *et al.* vs. the schooner Catharine, her tackle, &c.

JAMES S. SLUYTER,
Proctor for Libellants.

Decree. Filed the 23d day of July, 1853.

U. S. DISTRICT COURT.

NOAH DICKINSON *et al.*
vs.
THE SCH'R CATHARINE, &c.

Please take notice that the claimants herein appeal from the Decree of the Court in the above cause, and every part thereof.

Dated July 30, 1853. Yours, &c.,

COCHRANE & DONOHUE,
Proctors for the Respo'ts.

TO JAMES S. SLUYTER, ESQ.,
Proctor for the Libellant.

GEO. W. MORTON, ESQ.,
Clerk.

Indorsed 10, 91, 92. U. S. District Court. Noah Dickinson *et al. vs.* The Schooner Catharine, &c. Notice of appeal.

COCHRANE & DONOHUE,
Proctors for the Resp'ts.

Filed, August 1, 1853.
To GEORGE W. MORTON, ESQ.

1853, August, 24th. Filed mandate of Judge Ingersoll in this cause, as follows:—

U. S. DISTRICT COURT.

Let the appellant have five days further time to perfect his appeal from the judgment and decree, made in the above entitled cause.
Dated New York, 24th August, 1853.

CHARLES A. INGERSOLL,
District Judge.

Indorsed 10, 92. U. S. District Court. The Schooner Catharine *ads.* Noah Dickinson *et al.*

COCHRANE & DONOHUE,
For Claimants.

Mandate of Judge to extend time.
Filed, August 24th, 1853.

At a stated Term of the District Court of the United States of America, for the Southern District of New York, held at the City Hall in the city of New York, on Wednesday the twenty-fourth day of July, in the year of our Lord one thousand eight hundred and fifty-three.

Present: The Honorable Charles A. Ingersoll, District Judge.

NOAH DICKINSON
vs.
THE SCH'R CATHARINE, her tackle, &c.

On reading and filing the order of the *order of the* District Judge, and on motion of Messrs. Cochrane and Donohue, proctors for the claimants, it is ordered that they have five days further time from this date, to file and perfect their appeal.

Vol. 10, No. 91, 92. United States District Court, for the Southern District of New York. The Schooner Catharine *ag'st* Noah Dickinson *et al.*

COCHRANE & DONOHUE,
Proctors for Claimants.

Order to extend time to perfect appeal.
Filed the 24th day of August, 1853.

CIRCUIT COURT OF THE UNITED STATES OF AMERICA,
For the Southern District of New York, in the Second Circuit.

THE SCH'R CATHARINE, her tackle, &c., and COLLINS, Master, STARKS W. LEWIS *et al.*, Claimants,
vs.
NOAH DICKINSON *et al.*, libellants and appellants.
} Bond for Costs.

Know all men by these presents, that we, Ezra Lewis and Samuel W. Crowell, are held and firmly bound unto the above named libellants and appellees in the sum of seven thousand five hundred dollars, to be paid to the said libellants, for the payment of which, well and truly to be made, we bind ourselves, and each of us, our and each of our heirs, executors, and administrators, jointly and severally, firmly by these presents. Sealed with our seals, and dated the twenty-ninth day of August, in the year of our Lord one thousand eight hundred and fifty-three.

Whereas the above-named appellants have prosecuted an appeal to the Circuit Court of the United States for the Southern District of New York, to reverse the decree rendered in the above entitled suit, by the Judge of the District Court of the United States, for the Southern District of New York:

Now, therefore, the condition of this obligation is such that, if the above named appellants shall prosecute their appeal to effect and answer all damages and costs, if —— fail to make their appeal good, then this obligation shall be void, otherwise the same shall be and remain in full force and virtue.

EZRA LEWIS, [SEAL.]
SAMUEL CROWELL, [SEAL].

Sealed and delivered, and taken and acknowledged, this 29th day of August, 1853, before me,

GEORGE W. MORTON,
United States Commissioner.

UNITED STATES OF AMERICA,
Southern District of New York, ss.

Ezra Lewis and Samuel Crowell, being duly sworn, depose and say, and each for himself, saith that he is worth the sum of fifteen thousand dollars over and above all his just debts and liabilities.

EZRA LEWIS,
SAMUEL CROWELL.

Sworn to, this twenty-ninth day of August, A. D. 1853, before me

GEORGE W. MORTON,
U. S. Commissioner.

1784.

Vol. 10, No. 91. United States Circuit Court. The Schooner Catharine, her tackle, etc. *vs.* Noah Dickinson and others. Bond for costs on appeal.

COCHRANE & DONOHUE,
Proctors for Appell'ts.

Filed, August 29, 1853.

CIRCUIT COURT OF THE UNITED STATES,
For the Southern District of New York.

THE SCHOONER CATHARINE, her tackle, &c., STARKS W. LEWIS, JOHN RIDER, WILLIAM BAKER, CHARLES SMITH, and other Claimants; COLLINS, Master—Respondents and Appellants—

vs.

NOAH DICKINSON, SIMON H. HUBBARD, OLIVER P. SMITH, DAVID RUSSELL, EZRA WILLIAMS, and DAVID C. BARR, Libellants and Appellants.

To the Honorable the Circuit Court of the United States for the Southern District of New York, in the Second Circuit:

The appeal of the above named appellants respectfully sheweth: That on or about the 22d day of April, A. D. 1852, the above named libellants exhibited their libel in the District Court of the United States for the Southern District of New York, against the schooner Catharine, her tackle, apparel and furniture, and against Collins, master thereof, in a cause of collision, praying, among other things, that said schooner, for the reasons set forth in the libel, might be condemned to pay the damages of said libellants, amounting to over fifty dollars and costs, in said libel mentioned.

That process issued out of said court having been served on said schooner, the appellants did, on or about the day of A. D. 1852, claim said schooner; and did further, on or about the 19th day of June, A. D. 1852, file their answer to said libel, in said District Court, praying that said libel be dismissed, with their costs in that behalf as by reference to said libel may more fully appear.

That said cause came on to be heard before the Honorable Charles A. Ingersoll, Judge of the said District Court, on or about the 31st day of May, A. D. 1853, upon the depositions and proofs taken in said cause, and the testimony and proofs adduced by the respective parties; and the said Judge having advised thereon, on or about the 14th day of June, A. D. 1853, made a decree in said cause, whereby it was, among other things, decreed that the said libellants recover in said cause against said schooner, her tackle, &c., their damages agreeably to the prayer of the said libel.

And these appellants are advised and insist that said decree is

erroneous, inasmuch as the said should have been dismissed; and they also insist that the said Judge was not authorized to try said cause or determine the same.

And these appellants, for these and other reasons, appeal from the whole of the said decree to the next Circuit Court to be held in said District; and on said appeal they intend to have said cause heard anew in the Circuit Court on the pleadings and proofs in the District Court, and other proofs to be introduced in the said Circuit Court; and they pray that the record and proceedings may be returned to the Circuit Court, and the said decree, and every part thereof, may be reversed, with costs.

COCHRANE & DONOHUE,
Proctors for Respondents and Appellants.

Indorsed: 10,91. U. S. Circuit Court. The Schooner Catharine, her tackle, &c., Starks W. Lewis and others, Claimants; and Collins, master, respondents and appellants, vs. Noah Dickinson and others, libellants and respondents. Appeal.

COCHRANE & DONOHUE,
Proctors for Appellants and Respondents.

Filed August 29, 1853.

UNITED STATES OF AMERICA,
SOUTHERN DISTRICT OF NEW YORK,
City, County, and State of New York, ss.

Be it remembered, that on this first day of October, in the year of our Lord one thousand eight hundred and fifty-three, I, Richard E. Stilwell, a commissioner duly appointed by the Circuit Court of the United States for the Southern District of New York, in the Second Circuit, under and by virtue of the Acts of Congress, entitled "An Act for the more convenient taking of affidavits and bail in civil causes depending in the courts of the United States," passed February 20th, 1812, and the Act of Congress, entitled "An Act, in addition to an Act entitled 'An Act for the more convenient taking of affidavits and bail in civil causes depending in the courts of the United States,'" passed March 1st, 1817, and the Act entitled "An Act to establish the Judicial Courts of the United States," passed September 24th, 1789—Did call and cause to be and personally appear before me, at my office, at the new City Hall in the city of New York, in the said Southern District of New York, in the State aforesaid, George W. Morton, to testify, and the truth to say, on the part and behalf of the in a certain suit or matter of controversy, now depending and undetermined, in the Circuit Court of the United States for the Southern District of New York, wherein Noah Dickinson et als. are libellants and respondents, and the schooner Catharine, &c., Starks W. Lewis and als., claimants and appellants—

And the said George W. Morton being about the age of

years, and having been by me first cautioned and sworn to testify the truth, the whole truth, and nothing but the truth, in the matter of controversy aforesaid, I did carefully examine the said George W. Morton, and he did thereupon depose, testify, and say as follows, viz:

I am clerk of the United States District Court for the Southern District of New York; I was such clerk since 1851; in June last, from 10th to 14th, Judge Betts was in New York, I believe.

Q. Did you ever see the paper now shown to you, marked Ex. A?

A. I have.

Q. When did you first see that paper?

A. I can't recollect the day.

Q. Did you see it before the 20th June?

A. I think I did.

Q. Did you see it before the 14th June?

A. I can't fix the date when I first saw it.

Q. Was there a person by the name of Shufeldt tried in your court for forgery?

A. He was.

Q. Was that paper on file at the time of his trial?

A. It appears by the indorsement to have been filed on 30th April.

Q. Was that filed on the 30th April?

A. I do not think it was.

Q. Was not Judge Nelson applied to for that paper in consequence of a suggestion made by some person, after the trial of Shufeldt, that the Statute had not been complied with? (Obj'd to as leading.)

A. I think not; I have no knowledge of it.

Q. Did you, or not, address Judge Nelson by letter or otherwise on the subject of that appointment, or the want of it? (Objected to, because the letter is the best evidence.)

A. I did, but the date of my letter I can't recollect.

Q. Was it not after the trial of Shufeldt, that you so addressed him? (Objected to as leading.)

A. I cannot say, without seeing the letter; but my impression is, it was before.

Q. Did you ever send a copy of that paper of appointment to Judge Ingersoll?

A. I don't recollect; but, I think, it must have been given to him here. I know that I sent the original papers A, B, and C to Judge Nelson, and afterwards received them from him by mail, when a copy of A was made out, and handed or sent to Judge Ingersoll. But the date of my writing to Judge Nelson, and the receipt of the papers, I cannot recollect.

Q. Will you swear, Mr. Morton, that that order was received by you, before the trial of Shufeldt?

A. No—I cannot.

Q. What entry have you in your minutes of this order?

A. On the 30th of April, 1853, the following entries in the minutes (in pencil): Dr. Order. Appt. Judge Ingersoll to be entered. Then follows the order (in ink): A copy of A; it having been certified. The entry in pencil is in my handwriting, and the entry in ink is in Mr. Bridgham's.

Cross-Examined.

Q. Did Judge Ingersoll, in fact, sit as District Judge, and hold the District Court of the United States for the southern district of New York, from the 9th day of May, 1853, to the 22d of July, 1853?

A. He did, with the exception of those days when he was absent in Connecticut, and Judge Betts held the Court, and Judge Betts occasionally sitting with him, as appears by the minutes.

Q. Did Judge Betts sit with him in the present case?

A. He did not.

Q. Did Judge Ingersoll, during the period mentioned in the last interrogatory but one, try and determine a large number of cases in the District Court?

A. He did.

GEORGE W. MORTON.

October 4, 1853. Parties present.

Examination of Mr. Morton resumed.

The order A was received from Judge Nelson by me, as clerk, after the termination of Shufeldt's trial, that terminated on the 15th of June, 1853, and is so entered as per Ex. E annexed.

Cross-Examined by Mr. Sluyter.

Q. Will you explain how it was that Judge Ingersoll was trying causes here, at that time and previously? (Objected to.)

A. I cannot, further than understanding that Judge Nelson, when at New Haven, made arrangement with Judge Ingersoll to come on here, and hold the May and June terms of the District Court.—(Objected to the understanding of the witness upon the subject).—On inquiry, finding no designation on file, I had one prepared with the necessary certificates, and forward it to Judge Nelson, and it was returned to me, as clerk, some time in the beginning of July, signed, when it was entered on the minutes in a blank leaf for that purpose.

GEORGE W. MORTON,
Clerk.

UNITED STATES OF AMERICA:
SOUTHERN DISTRICT OF NEW YORK,
City, County, and State of New York, ss.

Be it remembered that, on this first day of October, in the year of our Lord one thousand eight hundred and fifty-three, I, Richard E. Stilwell, a commissioner, duly appointed by the Circuit Court of the United States, for the Southern District of New York, in the Second Circuit, under and by virtue of the Acts of Congress, entitled "An act for the more convenient taking of affidavits and bail in civil causes, depending in the Courts of the United States," passed February 20, 1812; and the act of Congress, entitled "An act, in addition to an act, entitled 'An act for the more convenient taking of affidavits and bail in civil causes, depending in the Courts of the United States,'" passed March 1, 1817; and the act, entitled "An act to establish the Judicial Courts of the United States," passed September 24, 1789, did call and cause to be and personally appear before me, at my office, at the new City Hall in the city of New York, in said Southern District of New York, in the State aforesaid, Joseph Bridgham to testify and the truth to say, on the part and behalf of the claimants, in a certain suit or matter of controversy, now depending and undetermined, in the Circuit Court of the United States, for the Southern District of New York, wherein Noah Dickinson *et al.* are libellants and respondents, and the schooner Catharine, her tackle, etc., claimants and appellants.

And the said Joseph Bridgham being about the age of — years, and having been by me first cautioned and sworn to testify the truth, the whole truth, and nothing but the truth, in the matter of controversy aforesaid, I did carefully examine the said Joseph Bridgham, and he did thereupon depose, testify, and say as follows, viz.:—

Q. Look at the minutes of the District Court and Ex. A. Did you ever see Ex. A before?

A. I have seen Ex. A before.

Q. Was that filed on the day that it is marked on the back as having been filed?

A. No, sir, it was not.

Q. When was it filed?

A. I don't recollect.

Q. Do you recollect of the trial of Shufeldt.

A. I do.

Q. Was or was not that filed before the trial of Shufeldt?

A. It was not.

Q. Was the order in your handwriting in the minutes entered before the trial of Shufeldt?

A. It was not.

Q. When was Shufeldt tried?

A. I can only tell by the records of the minutes of the Court.

The trial commenced on the 13th of June, and continued to the 15th inclusive.

Q. Is there any other order or entry entered in your minutes, than those referred to in, and annexed to Mr. Morton's deposition as to the appointment of Judge Ingersoll?

A. Not to my knowledge. Those are the only orders in reference to the appointment of Judge Ingersoll, as far as I know. There are many orders in reference to other matters.

Cross-examined by Mr. Field.

Q. In whose handwriting is the entry of the filing of schedule A?

A. In my handwriting, and I made it in pursuance of the order within.

Q. When did you make it?

A. I can't recollect.

Q. Can you explain, how it happened how Judge Ingersoll was here sitting and trying causes before the filing that order?

A. I cannot.

Q. Have you any reason to know, when the order was, in fact, made by Judge Nelson?

A. Yes; I can within some limited time.

Q. When was it made?

A. Now I shall have to limit the time; I have no means of fixing it definitely.

Q. Have you any means of knowing how long before it was filed it was actually made?

A. I have.

Q. Then state how long before its filing it was actually made.

A. I think it must have been within two or three weeks previous to its being filed; can't fix the time definitely.

Q. Where was it made?

A. I don't know.

Q. Were you with Judge Nelson when it was made?

A. I was not.

Q. Do you know whether it was made on the 30th of April, or not?

A. The body of the order is in my handwriting, and the paper must have been signed within two or three weeks of the time of filing.

Q. Why was it dated on the 30th of April?

A. The date is not in my handwriting; I don't know.

Direct resumed.

Q. When you speak of the filing, do you or not, mean the actual date of the filing?

A. I do.

Q. Was or not this order, marked A., made before or after Shufeldt's conviction?

A. It was written by me after Shufeldt's conviction; I understand, by making the order, its actual signing by Judge Nelson.

JOSEPH BRIDGHAM.

(*Exhibit A.*)

It having been certified to me, by the Clerks of the Circuit and District Courts of the United States, for the Southern District of New York, under the seals of the said Courts, that the public interests from the accumulation and urgency of judicial business in said Courts, require the services of an additional Judge from another District, and the facts certified being established to my satisfaction, I do hereby designate and appoint the Honorable Charles A. Ingersoll, District Judge of Connecticut, to hold said Circuit and District Courts, for the Southern District of New York, and to exercise all the powers conferred on him, under and by virtue of the Act of Congress, passed July 29, 1850, and the act amending the same, passed April 2, 1852, and until a further designation shall be made.

In witness whereof, I have hereunto set my hand and seal, at the City of New York, Southern District of New York, this 30th of April, in the year one thousand eight hundred and fifty-three.

J. NELSON, [SEAL.]

Circuit Judge of the Second Circuit of the United States.

Ex. A., *R. E. S.* Designation of Charles A. Ingersoll, as District and Circuit Judge for the Southern District, Second Circuit.

Filed April 30, 1853.

(*Ex. B., R. E. S.*)

UNITED STATES OF AMERICA,
Southern District of New York.

I, John W. Nelson, clerk of the Circuit Court of the United States, for the Southern District of New York, Second Circuit, do certify, that in my judgment the public interests, from the accumulation and urgency of judicial business in said District, require the designation of another Judge, to hold the said Court, and to discharge the judicial duties of a Circuit Judge of said District.

In testimony whereof, I have hereunto subscribed my name, and affixed the seal of the said Circuit Court, this twenty-ninth day of April, eighteen hundred and fifty-three.

[SEAL.] JOHN W. NELSON,
Clerk.

Certificate of John W. Nelson, U. S. Circuit Clerk.

Filed April 30, 1853.

(*Exhibit C.*)

UNITED STATES OF AMERICA,
Southern District of New York.

I, George W. Morton, Clerk of the District Court of the United States, for the Southern District of New York, do certify, that in my judgment the public interests, from the accumulation and urgency of judicial business in said District, require the designation of another Judge, to hold the said Court, and to discharge the judicial duties of a District Judge of said District.

In testimony whereof, I have hereunto subscribed my name, and affixed the seal of the said District Court, this twenty-ninth day of April, eighteen hundred and fifty-three.

[SEAL.] GEO. W. MORTON,
Clerk.

Certificate of George W. Morton, U. S. District Clerk.
Filed April 30, 1853.

At a stated Term of the District Court of the United States of America, for the Southern District of New York, held at the City Hall, in the city of New York, on Wednesday, the fifteenth day of June, in the year of our Lord one thousand eight hundred and fifty-three.

Present: The Honorable Charles A. Ingersoll, District Judge.

THE UNITED STATES
vs.
GARRET G. SHUFELDT.

This cause being still on trial, the jurors are called and severally answer to their names.

Mr. Shaffer sums up the cause for the defendant.

Mr. Dunning, the District Attorney, sums up the cause for the prosecution.

Charge is thereupon given by the court to the jury, who retire under charge of an officer duly qualified to attend them, and on their return say that they find the defendant guilty, and so they say all.

UNITED STATES OF AMERICA,
Southern District of New York, ss:

I, Richard E. Stilwell, a Commissioner, duly appointed by the Circuit Court of the United States, for the Southern District of New York, in the Second Circuit, under and by virtue of the Acts of Congress, entitled "An Act for the more convenient taking of affidavits and bail in civil causes, depending in the Courts of the United States," passed February 20, 1812, and the Act of Congress, entitled "An Act, in addition to an Act, entitled 'An Act for the

more convenient taking of affidavits and bail in civil causes, depending in the Courts of the United States,'" passed March 1, 1817, and the act, entitled "An Act to establish the Judicial Courts of the United States," passed September 24, 1789, do hereby certify, that the reason for taking the foregoing *deposition* is, and the fact is, that the testimony of witnesses in case of appeals, are required by the rules of court to be taken before a United States Commissioner. I further certify, that a notification of the time and place of taking the said *depositions* signed by me, was made out and served on the proctors for the appellee to be present at the taking of the *deposition*, and to put interrogatories, if he or they might think fit. I further certify, that on the first day of October, A. D. 1853, I was attended by the counsel for the respective parties, and by the *witnesses*, who were of sound mind and lawful age, and the *witnesses* were by me carefully examined and cautioned, and sworn to testify the whole truth, and the depositions were by me reduced to writing, in the presence of the witnesses, and they subscribed the same in my presence. I have retained the said deposition in my possession for the purpose of filing the same with my own hand to the court for which the same were taken. I further certify, that I am not of counsel or attorney for either of the parties in said deposition and caption named, or in any way interested in the event of the said cause named in the caption.

In testimony whereof, I have hereunto set my hand and seal, this first day of October, in the year of our Lord one thousand eight hundred and fifty-three, and of the independence of the United States the seventy-eighth.

R. E. STILWELL,
U. S. Com. Circuit Court of the U. S. for the Southern Dis. of N. Y.

At a special Term of the Circuit Court of the United States of America, for the Southern District of New York, in the Second Circuit, held at the City Hall, in the city of New York, on Friday the seventh day of October, in the year of our Lord one thousand eight hundred and fifty-three.

Present: The Honorable Samuel Nelson, an Associate Justice of the Supreme Court of the United States.

NOAH DICKINSON and others, Libellants and Appellees
vs.
The schooner CATHARINE, her tackle; JONATHAN COLLINS, Master, STARKS W. LEWIS and others, Claimants and Appellants.

This cause coming on to be heard on the appeal from the decree of the District Court.

Mr. Field reads from the Apostles the testimony on the part of the libellant and appellee.

Mr. Cochran reads from the Apostles the testimony on the part of the respondent and appellant.

Deposition of George W. Morton.

Deposition of George Bridgham.

Exhibits answered.

Mr. Cochran argues the case for appellant, Mr. Field argues the case for appellee.

Cur adv. vult.

At a special term of the Circuit Court of the United States of America for the Southern District of New York, in the Second Circuit, held at the City Hall in the city of New York, on Friday the seventh day of October, in the year of our Lord one thousand eight hundred and fifty-three. Present: the Honorable Samuel Nelson, Associate Justice of the Supreme Court of the United States.

THE SCHOONER CATHARINE, her tackle, &c., JONATHAN COLLINS, Master, STARKS W. LEWIS and others, Claimants and Appellants,
vs.
NOAH DICKINSON and others, Libellants and Appellees.

The appeal herein, from the decree of the District Court, coming on to be heard, and being argued by the advocates for the respective parties, and due deliberation being heard, it is now ordered, assigned and decreed that the said decree of the District Court, in all things affirmed—

And on motion of James S. Sluyter, proctor for the appellees, it is ordered, assigned and decreed that the libellants recover in this action against the schooner Catharine, her tackle, and the sum of six thousand two hundred dollars, the amount reported by the commissioners, together with their cost taxed in the said District Court, being the sum of three hundred and forty-eight dollars and eighty-eight cents, and that the said schooner, her tackle, &c., be condemned therefor—

And on like motion it is further ordered, that the said appellees recover of the said appellants the cost of the said appellees in this court to be taxed, including interest on the said sum of six thousand five hundred and forty-eight dollars and eighty-eight cents, the amount so reported due to the appellees, and costs, from the said twenty-third day of July, A. D. 1853—

And on like motion it is further ordered, that in pursuance of the Act of Congress, passed March 3d, 1847, a summary judgment be and the same is hereby entered against Ezra Lewis the principal

and Samuel Crowell the surety, on their bond given on the appeal for the said District Court to this court, for the sum of seven thousand five hundred dollars, the amount of their said bond executed on bringing the said appeal—

And on like motion it is further ordered, that unless an appeal be taken to this decree within ten days, the time limited and prescribed by the rules of this court, the appellees have their execution on the said judgment to satisfy this decree.

Circuit Court U. S., Southern Dist. New York. The schooner Catharine, &c., complainants and appellants, *vs.* Noah Dickinson and others, libellants and appellees. Copy decree.

JAS. S. SLUYTER,
Proctor for Appellees.

Filed Oct. 8, 1853.

CIRCUIT OF THE UNITED STATES OF AMERICA,
For the Southern District of New York, in the Second Circuit.

THE SCHOONER CATHARINE, her tackle, &c., STARKS W. LEWIS and others, Claimants and Appellants,
vs.
NOAH DICKINSON and others, Libellants and Appellees.
} Bond for Costs.

Know all men by these presents, that we, Ezra Lewis and Samuel Crowell, Mulford Howes and Zenas D. Bassett, jr., are held and firmly bound unto the above named Noah Dickinson and others in the sum of eight thousand dollars, to be paid to the said appellees; for the payment of which, well and truly to be made, we bind ourselves, and each of us, our and each of our heirs, executors and administrators, jointly and severally, firmly by these presents. Sealed with our seals, and dated the eighteenth day of October, in the year of our Lord one thousand eight hundred and fifty-three.

Whereas, the above named appellants have prosecuted an appeal to the Supreme Court of the United States, at Washington in the District of Columbia, to reverse the decree rendered in the above entitled suit, by the Judge of the Circuit Court of the United States for the Southern District of New York, Second Circuit—Now, therefore, the condition of this obligation is such, that if the above named appellants shall prosecute their appeal to effect, and answer all damages and costs; if they fail to make their appeal good, then this obligation shall be void, otherwise the same shall be and remain in full force and virtue.

EZRA LEWIS, [L. S.]
SAMUEL CROWELL, [L. S.]
ZENAS D. BASSETT, JR., [L. S.]
MULFORD HOWES, [L. S.]

Sealed and delivered, and taken and acknowledged, this 18th day of October, 1853, before me,

GEO. W. MORTON,
U. S. Com'r.

Sealed, delivered, taken and acknowledged, this 7th Dec., 1853, before me,

R. E. STILWELL,
U. S. Com'r.

UNITED STATES OF AMERICA,
Southern District of New York, ss.

Ezra Lewis and Samuel Crowell, Zenas D. Bassett and Mulford Howes, being duly sworn, depose and say, and each for himself saith, that he is worth the sum of sixteen thousand dollars, over and above all his just debts and liabilities.

EZRA LEWIS,
SAMUEL CROWELL,
MULFORD HOWES,
ZENAS D. BASSETT, JR.

Sworn to, this eighteenth day of October, A. D. 1853, before me,

GEO. W. MORTON,
U. S. Com'r.

Sworn to, this 7th Dec., 1853, before me,

R. E. STILWELL,
U. S. Com'r.

The sufficiency of the sureties to the within bond approved December 7th, 1853.

SAM'L R. BETTS.

Vol. —, page —. U. S. Circuit Court. The schooner Catharine, her tackle, &c., *vs.* Noah Dickinson and others. Bond for costs.

COCHRANE & DONOHUE,
Proctors for Appellees.

Filed this 18th day of October, 1853. Refiled Dec. 7, 1853.

Supreme Court of the United States.

The Schooner CATHARINE, her tackle, &c., STARKS W. LEWIS, JOHN RIDER, WILLIAM BAKER, CHARLES SMITH, COLEMAN STUDLEY, OWEN STUDLEY, ELISHA CROWELL, JAMES SMALL, JAMES SMALL, JR., DAVID KELLY, RUSSELL D. FERRIS, SETH COLLINS, MRS. RODY WING, PEMBER, and MRS. BETHA CROWELL, claimants, and JONATHAN COLLINS, master, appellants

vs.

NOAH DICKINSON, SIMON H. HUBBARD, OLIVER P. SMITH, DAVID RUSSELL, EZRA WILLIAMS, and DAVID C. BURR, respondents.

To the Honorable the Supreme Court of the United States:—

The appeal of the above named claimants and appellants respectfully showeth that on the twenty-second day of April, 1852, the above named respondents filed their libel in the District Court of the United States, for the Southern District of New York, against the schooner Catharine, her tackle, apparel, &c., and against Jonathan Collins, master thereof, in a cause, civil and maritime, for the recovery of damages alleged to have been sustained by them to the schooner San Luis, by collision with the said schooner Catharine, on the high seas, and that the said schooner Catharine was arrested upon process issued upon said libel, and was discharged on your petitioners filing their claim and entering into stipulations, and your petitioners thereupon filed their answer to said libel, and the said libellants replied thereto, and such proceedings were had in the said cause that on the twenty-third day of July, 1853, a final decree was made and pronounced therein by the said District Court, wherein it was in substance adjudged that the said libellants recover against the schooner Catharine, her tackle, &c., the sum of six thousand two hundred dollars, together with costs.

And that after such final decree your petitioners duly appealed therefrom to the Circuit Court of the United States for the Southern District of New York, and the said cause was removed thereby into the said Circuit Court, and there tried anew; and such proceedings were had in the said Circuit Court, that afterwards on the seventh day of October, 1853, the said Circuit Court made a final decree in the said cause, whereby it was decreed that the said decree of the District Court be in all things affirmed, with costs, and that the said appellees have execution, and that the stipulators cause their stipulations to be fulfilled, which said decree of the said Circuit Court is as these appellants are advised erroneous, and ought to be reversed.

Wherefore these appellants appeal from the whole of said decree of said Circuit Court to the Supreme Court of the United States, and respectfully pray that the said decree of the said Circuit Court and the libel, answer, pleadings, depositions, evidence, and proceedings in the said cause, may be sent to the Supreme Court of the

United States without delay, and that the said Supreme Court will proceed to hear the said cause anew, and that the said decree of the Circuit Court, and every part thereof may be reversed, and a decree made dismissing said libel with costs or such other decree as to the said Supreme Court shall seem just.

Dated New York, October 17th, 1853.

W. Q. MORTON,
Proctor for Appellants.

U. S. Supreme Court. The Schooner Catharine, &c., Starks W. Lewis, appellants, *vs.* Noah Dickinson, &c., respondents. Appeal.

W. Q. MORTON,
Proctor for Appellants.

Filed October 18, 1853.

By the Honorable Samuel R. Betts, one of the Judges of the Circuit Court of the United States for the Southern District of New York, in the Second Circuit.

To Noah Dickinson, Simon H. Hubbard, Oliver P. Smith, David Russell, Ezra Williams, and David C. Burr.

Whereas, Starks W. Lewis *et al.*, claimants of the schooner Catharine, her tackle, &c., and Jonathan Collins, master, have lately appealed to the Supreme Court of the United States from a decree lately rendered in the Circuit Court of the United States for the Southern District of New York, in the Second Circuit, made in favor of you the said Noah Dickinson, Simon H. Hubbard, Oliver P. Smith, David Russell, Ezra Williams, and David C. Burr, against the said schooner Catharine, her tackle, &c. and has filed the security required by law. You are therefore hereby cited to appear before the said Supreme Court at the City of Washington on the fifth day of December, 1853, to do and receive what may appertain to justice to be done in the premises.

Given under my hand at the City of New York, in the Southern District of New York, in the Second Circuit, the 18th day of October, in the year of our Lord 1853, and of the Independence of the United States the seventy-eighth.

SAMUEL R. BETTS. [SEAL.]

W. Q. MORTON,
Proctor for Claimants, Master, &c., Appellants.

I admit service of the within citation, and consent to appear for the respondents on appeal.

Dated Oct. 18, 1853.

J. S. SLUYTER.

Filed Oct. 18, 1853.